

**ANTITRUST DIVISION**  
**UNITED STATES DEPARTMENT OF JUSTICE**

**ANNUAL REPORT**

**FY 1999**

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# Foreword

March 20, 2000

By Assistant Attorney General Joel I. Klein

I am pleased to present this Report summarizing the recent major activities of the Antitrust Division of the Department of Justice. As the Report documents, this has been an active period for the Antitrust Division across the full-range of its enforcement responsibilities: criminal prosecutions, merger review, and civil non-merger activities. Our accomplishments range from prosecutions of international cartels that have resulted in greater fines than ever before to successful challenges to multibillion dollar mergers, not to mention challenges to exclusionary behavior in technologically critical industries.

Antitrust plays an important role in our economy. Competition is the cornerstone of this country's economic foundation. We have long extolled the virtues of the free market, which provides business with the opportunity to innovate, produce, and distribute goods and services without direct intervention by the government. Competition, rather than government directives, determines which businesses will succeed, and consumers are the ultimate—and appropriate—beneficiaries of the competitive process.

The antitrust laws ensure that the benefits of the competitive process are not interdicted by private anticompetitive conduct. The Supreme Court has described the Sherman Act as the

*This is the kind of antitrust enforcement policy to which this Administration is committed. It is both principled and pragmatic. There is no presumption that “big” is “bad,” but neither is there an assumption that the market will always “correct” anticompetitive problems. Instead, the Antitrust Division pays careful attention to facts, informed by economic analysis, in making its enforcement decisions.*

“magna carta” of the free enterprise system. The antitrust laws are thus used to deter and punish anticompetitive conduct and to obtain prospective relief to prevent such conduct in the future.

At the same time, caution must be taken to assure that the antitrust laws are not misused to protect competitors from the vigor of the competitive process. In a free market system, innovation and creativity should be rewarded, not penalized. There will inevitably be winners and losers in this battle, but while the antitrust laws are intended to prevent conduct that impairs the competitive process, the antitrust agencies are not in the business of picking who should win and who should lose. That responsibility falls to consumers, who make that determination through their purchasing decisions.

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and pragmatic. There is no presumption that “big” is “bad,” but neither is there an assumption that the market will always “correct” anticompetitive problems. Instead, the Antitrust Division pays careful attention to facts, informed by economic analysis, in making its enforcement decisions.

Despite the diversity of our enforcement targets—ranging from hard-core criminal violations to exclusionary practices by dominant producers and service providers—we have observed certain important trends that cut cross the full range of competitive activity: globalization of trade, rapid technological change, and deregulation. Each of these trends has important implications for the future of antitrust enforcement.

## **Globalization of Trade**

International trade is of increasing importance to the economic well-being of United States producers and consumers. U.S. firms frequently export to foreign countries, and American consumers purchase goods manufactured abroad. Nearly 25 percent of our GDP is now related to export and import trade. The increasing globalization of economic behavior presents important challenges to antitrust regimes that have traditionally been administered by individual sovereign nations. The Antitrust Division has taken account of the globalization of trade in important ways.

First, the Antitrust Division is devoting more of its resources to uncovering international cartel behavior that has significant economic consequences for American consumers. Perhaps the most widely publicized example during the past year was the successful prosecution of companies and individuals involved in vitamin production, which culminated in fines of over \$875 million for companies and in significant jail time for individuals. More of our criminal investigations involve foreign companies than ever before. To detect and prosecute international cartels, the Antitrust Division has developed programs that encourage cooperation by foreign companies and their employees, including various forms of cooperation agreements with other governments.

*Another important focus of the Department's antitrust enforcement efforts over the past few years has been our continuing effort to eliminate both private and public restrictions on competition in industries traditionally regulated as franchise monopolies.*

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So, too, the Antitrust Division has recognized the international dimension of merger activity. An increasing number of transactions have competitive implications in more than one country, and today it is not uncommon for a transaction to be subject to multicountry review. The Antitrust Division has endeavored to develop good working relationships with other countries and the European Union. We are working closely with governments around the world to cooperate in merger review, both to minimize burdens on private parties and to advance the cause of proper antitrust analysis. To advance this process, the Attorney General established the International Competition Policy Advisory Committee, which recently issued its report reviewing international antitrust issues and making recommendations for consideration.

### **Technological Change**

A number of our most important industries have been characterized recently by unprecedented levels of technological change. Such change has important implications for antitrust enforcement. On the one hand, such change creates opportunities for companies to develop new products and services and find rapid customer acceptance. It has been argued that the prospect for such change reduces the need for antitrust enforcement because a company that dominates an industry today may be replaced tomorrow by a company that suddenly offers a superior product or service. However, rapid technological change may actually increase barriers to entry through net-



work externalities and first-mover advantages, which pose risks that markets will “tip” very quickly toward a dominant supplier and thereby make entry extremely difficult. The more important that innovation becomes to society, the more important it is to preserve economic incentives to innovate. In such circumstances, timely and effective antitrust enforcement may be the key to preserving an environment in which companies—whether new or old, large or small—believe that there will be no artificial barriers to bringing new products and services to market.

It is undoubtedly true that rapid technological change requires careful attention to facts. Our challenges to the Lockheed Martin-Northrop Grumman transaction and Microsoft's monopoly of computer operating systems are not garden-variety antitrust actions. They and other challenges filed by the Antitrust Division were undertaken only

*The past decade has witnessed remarkable progress in moving these industries from a regime based largely on regulated monopoly to one that encourages competition wherever possible, a trend portending an increasingly important role for antitrust.*

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after careful consideration of both historical conduct and likely future effects. The fact that antitrust analysis of issues arising in high-technology industries may be difficult is no basis for abandoning the effort altogether. Enforcement decisions that are made today, especially in industries characterized by rapid technological change, will have important ramifications for the nature of the American economy for many years to come.

### **Deregulation**

In recent decades, legislative and regulatory changes in the United States have reversed a generation of pervasive government regulation and deregulated such basic industries as telecommunications, energy, financial services, and transportation. Competition, with appropriate reliance upon antitrust laws, has again become the norm.

The Antitrust Division continues to work with various agencies to find ways to replace regulatory constraints with competitive incentives. We have been very active in promoting competition pursuant to the Telecommunications Act of 1996, both to the Federal Communications Commission and in the courts. The Antitrust Division is the primary advocate of competition within the executive branch and works regularly with Congress, urging that the marketplace—through purchase decisions made by consumers—rather than government agencies determine the products and services that businesses will provide.

The United States has again become the dominant economy of the world. The fact that this reemergence has coincided with a substitution of competition for regulation and a reinvigorated antitrust enforcement policy is not a coincidence. Michael Porter noted in his landmark work *The Competitive Advantage of Nations* (at pp. 662-63) that domestic firms spared from competing at home are unlikely to succeed abroad. He also found that the importance of domestic rivalry has “strong implications for antitrust policy.... A strong antitrust policy, especially in the area of horizontal mergers, alliances, and collusive behavior, is essential to the rate of upgrading in an economy.” We could not agree more.

I hope you will find the attached report informative. This is the first Annual Report published by the Antitrust Division in over three years. As a result, the discussion of our enforcement programs includes references to certain matters begun before fiscal 1999 that carried over into that year, and the appendices contain information about cases filed subsequent to publication of our last annual report.

Our recent accomplishments are testimony to the hard-working men and women of the Antitrust Division and the bipartisan support that antitrust enforcement has enjoyed. Both are critical to the health and future of the American economy.

## The Criminal Enforcement Program

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The Antitrust Division institutes criminal enforcement of Section One of the Sherman Act, 15 U.S.C. Section 1, against hardcore cartel activity such as price-fixing, bid-rigging, and market-allocation agreements. Such conduct causes substantial harm to purchasers of goods and services.

The prosecution of such domestic cartel activity has been at the heart of the Department of Justice's antitrust enforcement efforts ever since the enactment of the Sherman Act in 1890 and continues unabated. In the last several years, however, the Antitrust Division has made the prosecution of international cartels that victimize American businesses and consumers one of its highest priorities. This strategy recognizes that in many instances international cartels pose an even greater threat to American businesses and consumers than do domestic conspiracies because they tend to be highly sophisticated and extremely broad in their impact—in terms of geographic scope, the amount of commerce affected, and the number of businesses and consumers victimized by the conspiracy.

The Antitrust Division recently has prosecuted international cartels operating in a broad spectrum of commerce, including vitamins, food and feed

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additives, chemicals, graphite electrodes (used in steel making), and marine construction and transportation services. Since the beginning of FY 1997, the Antitrust Division has prosecuted international cartels affecting over \$10 billion in U.S. commerce. The cartel activity in these cases cost U.S. businesses and consumers many hundreds of million of dollars annually.

The Antitrust Division's strategy of concentrating its criminal resources on international cartels has led to unprecedented success in terms of cracking those cartels, securing the conviction of the major conspirators, and obtaining record-breaking fines.

Since the beginning of FY 1997, the Antitrust Division has obtained over \$1.5 billion dollars in criminal fines, well over 90 percent of which were imposed in connection with the prosecution of international cartel activity. To put this fine figure into perspective, consider that the highest amount of

finances obtained by the Antitrust Division in any given year prior to FY 1997 was roughly \$42 million. In FY 1997, the Antitrust Division shattered that mark when it collected \$205 million in criminal fines—nearly 500 percent higher than during any previous year in the Antitrust Division’s history. In FY 1998, the Antitrust Division topped that number when it obtained over \$265 million in criminal fines. And then, in FY 1999, the Antitrust Division thrust the new record still another 400 percent higher when it secured over \$1.1 billion in criminal fines. The amount of fines obtained since FY 1997 is many multiples higher than the sum total of all criminal fines imposed for violations of the Sherman Antitrust Act dating back to the Act’s inception in 1890.

The dramatic increase in fines reflects the fact that the major international cartels prosecuted over the past few years have been bigger, in terms of the volumes of affected commerce and

the amount of harm caused to American businesses and consumers, than any conspiracies previously encountered by the Antitrust Division.

For example, the international vitamin cartel, which affected over \$5 billion in U.S. commerce, was the most harmful and elaborate conspiracy ever uncovered by the Antitrust Division. The members of the vitamin cartel reached agreements on everything from how much product each company would produce, to how much they would charge, to which customers they would sell. The victims who purchased directly from the cartel members included companies with household names such as General Mills, Kellogg, Coca-Cola, Tyson Foods, and Proctor & Gamble. However, these companies were just the first to feel the effects of this conspiracy. In the end, for nearly a decade, every American consumer—anyone who took a vitamin, drank a glass of milk, or had a bowl of cereal—ended up paying more

**Antitrust Division Criminal Fines**

**Fine Amounts**

1990:	\$23,575,000
1991:	\$20,379,000
1992:	\$23,705,000
1993:	\$42,296,000
1994:	\$40,236,000
1995:	\$41,653,000
1996:	\$26,817,000
1997:	\$205,178,000
1998:	\$266,924,000
1999:	\$1,105,654,316





### Sherman Act Violations Yielding a Fine of \$10 Million or More

Defendant (Fiscal Year)	Product	Fine (million)	Geographic Scope	Country
F. Hoffman-La Roche Ltd. (1999)	Vitamins	\$500	International	Switzerland
BASF AG (1999)	Vitamins	\$225	International	Germany
SGL Carbon AG (1999)	Graphite Electrodes	\$135	International	Germany
UCAR International, Inc. (1998)	Graphite Electrodes	\$110	International	United States
Archer Daniels Midland Co. (1997)	Lysine & Citric Acid	\$100	International	United States
Takeda Chemical Industries, Ltd. (1999)	Vitamins	\$72	International	Japan
Haarmann & Reimer Corp. (1997)	Citric Acid	\$50	International	German Parent
HeereMac v.o.f. (1998)	Marine Construction	\$49	International	Netherlands
Eisai Co., Ltd. (1999)	Vitamins	\$40	International	Japan
Hoechst AG (1999)	Sorbates	\$36	International	Germany
Showa Denko Carbon, Inc. (1998)	Graphite Electrodes	\$32.5	International	Japan
Daiichi Pharmaceutical Co., Ltd. (1999)	Vitamins	\$25	International	Japan
Nippon Gohsei (1999)	Sorbates	\$21	International	Japan
Pfizer Inc. (1999)	Maltol/Sodium Erythorbate	\$20	International	United States
Fujisawa Pharmaceuticals Co. (1998)	Sodium Gluconate	\$20	International	Japan
Dockwise N.V. (1998)	Marine Transportation	\$15	International	Belgium
Dyno Nobel (1996)	Explosives	\$15	Domestic	Norwegian Parent
F. Hoffmann-LaRoche, Ltd. (1997)	Citric Acid	\$14	International	Switzerland
Eastman Chemical Co. (1998)	Sorbates	\$11	International	United States
Jungbunzlauer International (1997)	Citric Acid	\$11	International	Switzerland
Lonza AG (1998)	Vitamins	\$10.5	International	Switzerland
Akzo Nobel Chemicals, BV & Glucona, BV (1997)	Sodium Gluconate	\$9	International	Netherlands
ICI Explosives (1996)	Explosives	\$10	Domestic	British Parent
Mrs. Baird's Bakeries (1996)	Bread	\$10	Domestic	United States
Ajinomoto (1996)	Lysine	\$10	International	Japan
Kyowa Hakko Kogyo, Co., Ltd. (1996)	Lysine	\$10	International	Japan

so that the conspirators could reap hundreds of millions of dollars in additional revenues.

To date, the vitamin investigation has resulted in convictions against

Swiss, German, Canadian, and Japanese firms and over \$875 million in criminal fines against the corporate defendants, including a \$500 million fine imposed on F. Hoffmann-La Roche Ltd. (HLR) and a \$225 million fine imposed on

BASF AG. The \$500 million fine imposed against HLR is the largest fine ever imposed in any Department of Justice proceeding under any statute. The Antitrust Division also has thus far prosecuted seven American and foreign executives who participated in the vitamin cartel. All of these individuals, including the foreign defendants, are either already serving time in federal prison or are awaiting sentencing and face potential jail sentences as well as heavy fines. For example, Kuno Sommer, the former director of Worldwide Marketing for Vitamins at HLR, and Roland Brönnimann, the former president of the Fine Chemical and Vitamin Division at HLR, were recently sent to prison and ordered to pay substantial fines for their roles in the vitamin cartel. Messrs. Sommer and Brönnimann are the first European nationals to serve time in a U.S. prison for engaging in cartel activity. The imposition of jail sentences against foreign nationals residing outside this country, together with the unprecedented fines obtained in this matter, sends a powerful deterrent message that

the United States is committed to vigorous antitrust enforcement against international cartel activity.

The increased effectiveness of the Antitrust Division's anticartel efforts result from more effective investigation as well as good trial work. The Antitrust Division's Amnesty Program has been a major contributor to its investigative success. In August 1993, the Antitrust Division expanded its Amnesty Program to make it easier and more attractive for companies to come forward and cooperate with the Antitrust Division in exchange for a complete pass on prosecution. Today, that program is the Antitrust Division's most effective generator of large cases, and it is the Department of Justice's most successful leniency program. During the past year, the Antitrust Division has been receiving amnesty applications at the rate of approximately two per month—a more than twenty-fold increase compared to the prior Amnesty Program. Moreover, in the past year alone, the Amnesty Program has led to dozens of convictions and over \$1 billion in criminal fines.

## The Merger Enforcement Program

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Section 7 of the Clayton Act (15 U.S.C. Sec. 18) prohibits mergers that may substantially lessen competition. The Antitrust Division's goal in enforcing Section 7 is to preserve for consumers—individuals, businesses and government—the price-reducing and quality-enhancing effects of competition.

The Antitrust Division's merger enforcement program has been tested during the past two years by record numbers of transactions filed under the Hart-Scott-Rodino Act's premerger review provisions. In FY 1998 and 1999, approximately 4,500 transactions were filed each year—more than double the number filed just a few years earlier. During the past two years, 97 transactions have been abandoned or restructured in response to the competitive concerns expressed by the Antitrust Division, the highest level of merger enforcement activity in its history. These transactions encompassed many products and services that affect everyday life, including telephone, Internet, health insurance, airline, and banking services, local radio advertising, movie theaters, aluminum cans, trash hauling and disposal, voting machines, electronic benefits transfer, and our military's most sophisticated weapons. Many of these transactions have involved firms with billions of dollars in revenues, operating in numerous product and service markets.

*The analysis of proposed mergers has become increasingly difficult as the products and services of our economy become more complex and the pace of the development of new products increases.*

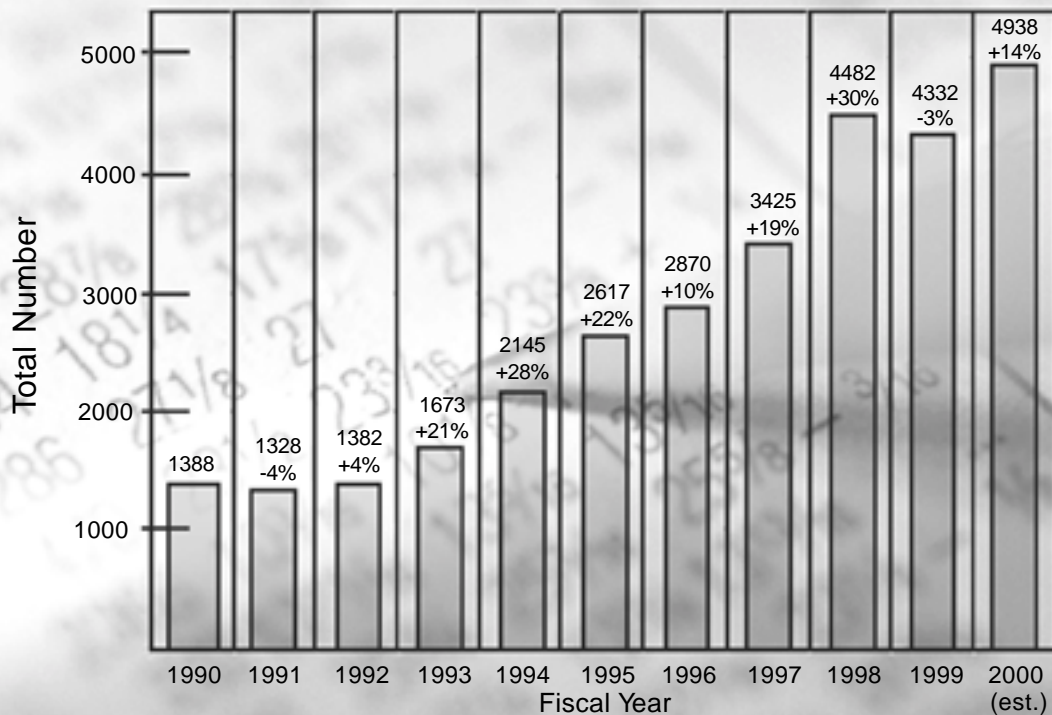
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The analysis of proposed mergers has become increasingly difficult as the products and services of our economy become more complex and the pace of the development of new products increases. In technologically complex or rapidly changing markets, the Antitrust Division must determine not only the extent to which the merging firms compete today but also the manner in which such rivalry is likely to be affected by foreseeable innovation from these firms and others in the same or related markets. This type of complex, fact-based analysis led to the Division's suit to block the \$11.9 billion proposed merger of Lockheed Martin and Northrop Grumman, the largest merger ever challenged by the government, as well as to the divestitures ordered in connection with Raytheon's acquisitions of the defense electronics businesses of Texas Instruments and Hughes Electronics. The Division's goal in each of these transactions was to preserve for our armed services the competition necessary for development of innovative, cutting-edge weapons systems.

In *United States v. Primestar*, the Division challenged an acquisition that raised the risk that the cable industry would be able to impede competition from a new technology. Cable television companies, which for many years have dominated markets for the distribution of multichannel video programming, are beginning to face competition from firms using new technology to distribute programming through high-powered satellites. The Division sued to block an effort by five of the nation's largest cable companies, acting through their joint venture Primestar, to acquire one of only three orbital slots available to provide such high-power direct broadcast satellite service. The parties abandoned the transaction before trial.

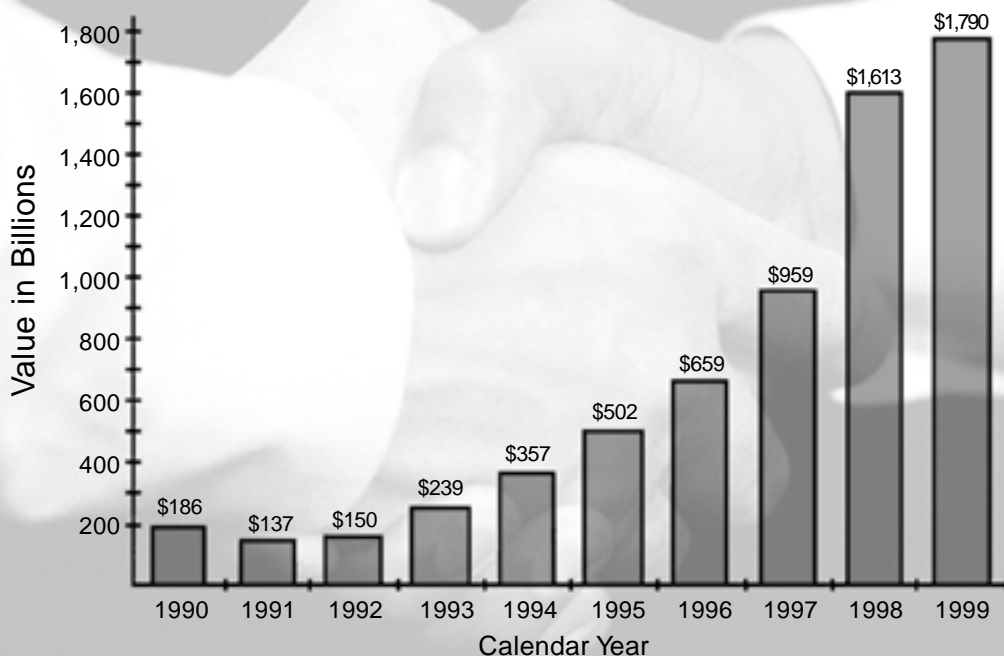
Much of the Antitrust Division's merger enforcement work over the last few years has been concentrated in recently deregulated or rapidly consolidating industries. For example, the relaxation of radio station ownership restrictions in the Telecommunications Act of 1996 has led to rapid consolidation in the radio industry. The Division has investigated dozens of radio mergers and has challenged transactions that would have led to competitive concerns; all of those transactions were either restructured to resolve the Division's objections or abandoned. During FY 1999 alone, the Division analyzed numerous bank merger transactions, including some of the largest in history, and required divestitures of

### Hart-Scott-Rodino Premerger Filings\*



\*Chargeable filings. Data does not include transactions for which notice must be given but no filing fees are required, such as those subject to approval by federal regulatory agencies.

## Value of U.S. Merger Activity\*



Source: Securities Data Company

local branches and assets in seven transactions, including the largest divestiture in bank merger history. The Division also challenged a merger between a gas and an electric company, as well as Northwest Airlines' acquisition of voting control of Continental Airlines.

In two cases last year, *United States v. Aetna* and *United States v. Cargill*, the Division demonstrated that its concerns about market power extend to circumstances involving "monopsony power," in which a transaction may create or enhance the power of buyers. In *Aetna*, the Division's complaint alleged that, in certain geographic markets, the merged firm would obtain the ability to depress

artificially physicians' reimbursement rates, leading to a reduction in quantity or degradation in quality of physicians' services. In *Cargill*, the Division's complaint alleged that, in certain geographic markets, the acquisition of Continental's grain business by Cargill would allow Cargill to depress artificially the prices paid to farmers for grain and soybeans. Both cases were successfully resolved by consent decree.

The majority of the Division's merger cases are resolved by consent decrees requiring divestitures that are designed to protect competition. Full compliance with consent decrees is therefore essential to merger enforcement. During the year, the Division

filed criminal and civil contempt charges against Smith International and Schlumberger, Ltd. for violation of a consent decree. In December, the companies agreed to pay \$13.1 million in civil fines; both were found in criminal contempt and fined \$750,000 each. The Division takes its consent decrees seriously and expects defendants to do so as well.

Nevertheless, there will be circumstances in which the Division concludes that the anticompetitive effects of a particular transaction cannot be cured by a consent decree and that the transaction should be prohibited in its entirety. The Antitrust Division's willingness to

engage in litigation on merger issues provides important benefits to the public over and above the protection of competition in the particular markets affected by the merger in question. It signals that the Division is unwilling to accept an inadequate divestiture or other remedy, and it helps ensure that merger law reflects current learning. In the past two years, the Antitrust Division has filed or threatened to file 13 lawsuits to prohibit proposed transactions in their entirety, and the Division will continue to litigate merger challenges whenever necessary to achieve appropriate relief or advance merger analysis in the courts.

## The Civil Non-Merger Enforcement Program

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The Antitrust Division's civil non-merger enforcement program has been addressing one of the most timely questions about antitrust enforcement: Are the antitrust laws adequate to protect consumers from anticompetitive harm that may arise during a period of unprecedented technological change? During this period, the Antitrust Division has filed complaints challenging a wide variety of both unilateral and multilateral conduct in industries that are important to consumers, such as personal computer operating systems, credit cards, and airlines, to ensure that consumers are not denied the full benefits of competition. The Antitrust Division has simultaneously continued its competitive advocacy efforts before Congress and federal administrative agencies to urge reliance on competition, rather than regulation, as the means to maximize consumer welfare.

Recent years have seen unprecedented technological change in many industries, particularly those involving information technology. While some people have contended that the rapid pace of change obviates the need for antitrust enforcement on the ground that new entrants can easily supplant dominant incumbents that try to exert market power, the Division believes that such a generalization is mistaken. Under certain circumstances, network externalities and first-mover advantages associated with information technology

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systems pose special risks that markets will “tip” very quickly in favor of a dominant incumbent. In such cases, timely and effective antitrust intervention may be even more important than is normally the case if we are to ensure that the eventual market winner prevails on the basis of competition on the merits.

Network effects, a phenomenon of various computer and communications systems, arise when the value of a product or service to a user increases with the number of other users or as products compatible with the service increase. Network effects arise directly where communication with other users is important; for example, in telecommunications or sharing of computer files. Network effects can also arise indirectly where a product's value depends heavily on complementary products (such as application programs compatible with a computer's operating system), since a larger customer base tends to attract a greater variety of such complements. Where network effects are



substantial, the market success of a competitor's product will depend not only on its inherent attributes (such as price or ease of use) but also on its ability to interface seamlessly with the dominant firm's products or with complementary products tailored for those products. Installed-base compatibility advantages can give the dominant firm a competitive edge also in related markets, as well as help defend its core market power against rivals whose offerings are otherwise superior. Antitrust concerns arise when a dominant firm's advantages derive from contrived incompatibilities (that is, not from genuine efficiencies) or other exclusionary practices against rivals that restrict efficient access.

The most significant of the Antitrust Division's enforcement efforts of this type has been its action against

Microsoft. In 1998, the Antitrust Division filed a complaint charging Microsoft with violating Sections 1 and 2 of the Sherman Act in connection with its efforts to use exclusionary practices to protect its monopoly in personal computer operating systems and to extend its monopoly power into the Internet browser market. Trial on the liability issues was completed in 1999, and the District Court issued extensive findings of fact on November 5, 1999.

Concerns about innovation in services important to consumers led the Antitrust Division to file suit in another case involving collaborative conduct by competitors. In October 1998, the Antitrust Division charged Visa and MasterCard, the two dominant general-purpose credit card networks, with failing to compete against one another



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and adopting rules to prevent their member banks from dealing with other card networks, all of which retarded innovation. The case, which is scheduled to go to trial in June, will highlight the importance that the antitrust laws attach to preserving competitive incentives and opportunities for exiting and potential rivals.

During the year, the Antitrust Division also filed suit charging American Airlines with monopolizing routes emanating from its Dallas/Ft. Worth (DFW) hub in violation of Section 2 of the Sherman Act, through predatory practices designed to drive low-cost carriers out of DFW routes. The complaint charges that American added uneconomic flights and reduced fares in DFW routes served by low-cost carriers until the low-cost carriers were forced out of the market; American viewed such conduct as an “investment” to protect its ability to charge high fares on DFW routes. This is the first predation case brought against an airline by the Division since the industry was deregulated in 1979.

The Antitrust Division has also continued its long-standing policy of being an effective advocate for the cause of competition in various legislative proceedings. The Antitrust Division

testifies regularly to Congress on various proposals with competitive implications. In recent years, significant segments of the American economy, subjected to economic regulation for half a century or more, have been substantially deregulated by statute. Where public restraints have been lifted, proper application of the antitrust laws ensures that the benefits of competition will not be impaired by private restraints.

Even in industries that have not been deregulated by statute, regulatory agencies often retain substantial discretion to promote competitive behavior. The Antitrust Division works closely with many federal agencies, including the Department of Transportation, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, and the Federal Communications Commission, to urge that they rely in their decision making on competitive principles to the maximum extent consistent with the other statutory goals.

Thus, through antitrust enforcement actions, direct overtures to Congress for regulatory reform, and communications with federal regulatory agencies, the Antitrust Division remains the government’s foremost proponent of competition.



## The Telecommunications Competition Program

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The promotion of competition in telecommunications has been one of the Antitrust Division's most significant accomplishments of the past three decades and will be one of its greatest continuing challenges in years to come.

For most of the twentieth century, the telecommunications industry in the United States was a regulated monopoly. In the late 1960s, the Antitrust Division participated in FCC proceedings and successfully advocated the introduction of competition into long-distance telephone service. In 1974, the Justice Department filed a monopolization case against AT&T, seeking structural relief that would permit the long-distance competition then authorized by the FCC to develop. That case was resolved through the entry of a consent decree in 1982, which involved a breakup of AT&T. The breakup was highly controversial, but subsequent experience proved its wisdom. Competition grew and flourished. By the mid-1990s, the lower prices and rapid innovation generated by competition and deregulation of long-distance telephone service and telecommunications equipment manufacturing in the United States prompted U.S. policy makers to seek to extend competition more broadly throughout the domestic telecommunications industry. This effort culminated in the passage of the Telecommunications Act of 1996, which eliminated legal restrictions on competition in local

*Thanks in significant part to the Antitrust Division's activities, consumers today have more choices than ever before in choosing among providers for local telecommunications services, for wireless services, for video services, for Internet services, and for international telecommunications services.*

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telephone service and firmly established a fundamental national policy favoring competition and deregulation in all telecommunications markets. The new competitive environment created by the Telecommunications Act presented several competition advocacy challenges for the Antitrust Division, which are reflected in its activities since 1996.

**1. Opening Local Telecommunications Markets.** The Telecommunications Act of 1996 created opportunities to eliminate the most important remaining monopoly in the telecommunications industry—the monopoly of local telecommunications services controlled by the Bell Operating Companies (BOCs) and other incumbent local exchange carriers. The Antitrust Division has worked to maximize those opportunities by successfully advocating principled and procompetitive interpretation and implementation of the local market opening provisions of the Act.

To that end, the Division filed extensive comments in the FCC's Local Competition rulemaking advocating

*The globalization of the telecommunications industry has created new challenges for the Antitrust Division. The Division's mission in the global arena mirrors its domestic mission.*

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principles that the FCC adopted when it promulgated its local competition rules. The Division then worked closely with the FCC in defending those rules (and the FCC's rulemaking jurisdiction) in the Eighth Circuit and before the Supreme Court, which largely upheld the FCC's procompetitive rules. The Antitrust Division also assisted in successfully defending actions in which the constitutionality of the 1996 Act's transitional restrictions on the BOCs were challenged. Assistant Attorney General Joel Klein successfully argued in the U.S. Court of Appeals for the Fifth Circuit that the restrictions on the BOCs do not constitute a "bill of attainder" and are not otherwise unconstitutional.

The Antitrust Division has also assisted in monitoring and filing *amicus* briefs in the numerous district court and court of appeals cases under Section 252 of the Telecommunications Act, reviewing arbitrated interconnection agreements between incumbent local exchange carriers (LECs) and new entrants. These efforts have helped to produce a substantial body of precedent supporting appropriate, procompetitive interpretations of the market-opening requirements of Sections 251 and 252 of the Act.

These litigation victories have been critically important in establishing a solid legal foundation for the market-opening process contemplated by the 1966 Telecommunications Act, but litigation victories will not, by themselves, create competition. Successful

competition will also require incumbent LECs and new entrants to implement the technically complex arrangements for interconnection and access to the incumbents' ubiquitous local networks.

The development of these arrangements has been the focus of a substantial portion of the Division's efforts in connection with its review of long-distance service applications by the BOCs under Section 271 of the Act. In late 1996, the Division solicited public input concerning the standard that it should use in reviewing these applications, and concluded that it would support Section 271 applications only if the applicant demonstrated that its local market was "fully and irreversibly open to competition." The FCC adopted an interpretation of the critical threshold requirements of Section 271 that followed the Division's recommendations. The agency's decision was affirmed by the D.C. Circuit Court of Appeals. The Division has explained in detail—in its formal evaluations of Section 271 applications, in speeches, and in its frequent discussions with interested parties—how it will apply that standard in evaluating many specific controversies that can be expected to arise in connection with the market-opening process. The Division has devoted substantial resources to the continuous monitoring of the BOCs' market-opening efforts, through discussions with the BOCs, competing carriers, consumer groups, state commissions, and others. As a result of this process, many of the requirements for a successful 271 application have been

met by a number of BOCs, and the Division is hopeful that successful applications, demonstrating fully and irreversibly open markets, will be filed in the near future.

These efforts have led to substantial entry by competitive local exchange carriers (CLECs). Using exclusively their own facilities or a combination of their own facilities with elements of the BOCs' networks, these CLECs are providing local telecommunications services to an increasing number of customers. CLECs had installed more than 800 voice switches by the end of 1999, compared to a total of 139 voice switches in 1996. CLECs tripled the size of their local fiber transmission networks from 1996 to 1999. As of June 1999, CLECs had obtained approximately 685,000 unbundled loops from incumbents (an increase of 180 percent over the previous year) and had collocated in wire centers serving 60 percent of all lines in the country (compared to 32 percent the previous year). CLECs have achieved local market shares approximating 10 percent in some states, a remarkable achievement in markets that were virtually complete monopolies throughout most of the twentieth century.

*2. Promoting Competition in the Global Telecommunications Market.* The telecommunications industry is a central component of the emerging global economy. As firms in other markets have expanded the geographic scope of their operations, their need for global communications capabilities, both voice and data, have greatly increased. Improved technology and more competitive telecommunications markets throughout the world have also lowered the costs and prices of tele-

communications services, further stimulating demand for international communications.

The globalization of the telecommunications industry has created new challenges for the Antitrust Division. The Division's mission in the global arena mirrors its domestic mission. First, we have worked to support the opening of markets for international telecommunications, a process that will also entail the opening of markets in other countries. These international market-opening efforts will benefit American consumers, who purchase a large share of international telecommunications services. It will also benefit American telecommunications firms, whose experience in competitive domestic markets has positioned them for success in the international arena as well. Second, we have worked closely with telecommunications and competition authorities in other countries, particularly with respect to merger enforcement, to ensure the consistent application of sound policies that will protect competition in international markets.

The transition to deregulated, competitive telecommunications markets will continue to create new challenges for the Antitrust Division in the coming years. That transition is far from complete. In many critically important telecommunications markets, incumbent providers still maintain substantial market power. But the experience in moving to competitive equipment and long-distance markets over the past two decades and more recent experience in extending competition to other markets under the Telecommunications Act has demonstrated the great benefits of competitive mar-

kets. Thanks in significant part to the Antitrust Division's activities, consumers today have more choices than ever before in choosing among providers for local telecommunications services, wireless services, video services, Internet services, and international

telecommunications services. More importantly, the Division's efforts have helped to create a solid foundation for greater competition in the future and the lower prices, improved technology, and broader consumer choices that such competition provides.

## International Antitrust Policy and Procedures

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As a result of the increasing globalization of the world economy in recent years, it is increasingly common for business conduct in one country to have anticompetitive consequences in other countries. This trend has given rise to new challenges for the Antitrust Division. The most immediate challenge is to ensure continued, effective enforcement of the antitrust laws against unlawful conduct, wherever it occurs, that causes injury in the United States. As noted previously, the Division has actively pursued criminal enforcement against international cartels. The Division now has more than 30 ongoing grand juries—well over one-third of its criminal investigations—looking into international cartel activity.

The Division has also sought to encourage developments in competition law throughout the world that will both further the enforcement of sound, effective antitrust laws and reduce any costs imposed on United States businesses and consumers by reason of the number of, or possible inconsistencies among, different national competition laws. To those ends, the Division has taken several steps to facilitate its obtaining evidence (both documents and witnesses) located abroad in connection with its cartel enforcement activities. In April 1998, for example, the OECD ministers endorsed a Division-introduced Hard-Core Cartel Recommendation that encourages the

*The Division now has more than 30 ongoing grand juries—well over one-third of its criminal investigations—looking into international cartel activity.*

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29 OECD member countries to enact and enforce laws prohibiting hard-core cartels as well as to enter into mutual assistance agreements to permit the sharing of evidence with foreign antitrust authorities to the extent permitted by national laws. In April 1999, the United States signed an agreement with Australia, the first under the International Antitrust Enforcement Assistance Act of 1994, that will permit the two antitrust enforcement agencies to share confidential information on both civil and criminal matters. In March 1999, the United States signed an antitrust cooperation agreement with Israel, and similar agreements were signed in October 1999 with Japan and Brazil.

As described in detail above, the Division has been actively engaged in international merger and civil non-merger enforcement. In many cases the business conduct involved is subject to review by two or more countries' antitrust agencies. As a result, the Division has had numerous occasions to work with the Commission of the European Communities on merger matters and has had good experiences with case-specific cooperation. One example is the WorldCom/MCI merger

*During the past several years, the Division has also worked with other U.S. agencies and in multinational fora to improve the overall environment for competitive markets and sound antitrust enforcement.*

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involving two U.S. telecommunications firms, which resulted in the divestiture of MCP's \$1.75 billion in internet assets—the largest divestiture in U.S. merger history. In that case, the parties provided written waivers of confidentiality that permitted the two agencies' staffs to work closely together in making their independent analyses of the transaction. The Division and the European Commission ultimately reached essentially the same conclusions, and before announcing its approval of the transaction in July 1998, the Commission formally requested, pursuant to the 1991 U.S.-EU antitrust cooperation agreement, the Division's cooperation and assistance in evaluating and implementing the divestiture proposal that had been proposed to both the Division and the Commission. A similar procedure was successfully followed by the Division, the European Commission, and the merging parties in the Dresser/Halliburton merger, where the antitrust concerns were resolved by a U.S. consent decree requiring a significant divestiture.

Anticipating that they will be faced with important transnational civil nonmerger matters, the United States and the European Union entered into a new positive comity agreement in June 1998. This agreement builds on the positive comity provisions of the first such agreement, which was adopted in 1991. Under the "positive comity" concept, the antitrust authority of one country preliminarily determines that

there are reasonable grounds for an antitrust investigation, typically in a case where a firm based in that country appears to have been denied access to the markets of another country by anticompetitive behavior in the latter. The requesting authority refers the matter, along with its preliminary analysis, to the authority whose home markets are most directly affected by the suspect behavior. After consulting with the foreign antitrust authority and depending on that authority's conclusions and actions, the requesting authority may accept the foreign authority's conclusions or seek different results under its own laws.

While no referrals have yet been made under the 1998 agreement, in 1997 the Division made a formal referral under the 1991 agreement regarding possible anticompetitive conduct by certain European airlines that may be preventing U.S.-based computer reservations systems from competing effectively in certain European countries. In 1999, the European Commission issued a statement of objections, which opens formal proceedings, against one of the airlines pursuant to this referral.

During the past several years, the Division has also worked with other U.S. agencies and in multinational fora to improve the overall environment for competitive markets and sound antitrust enforcement. During this period, for example, the Division has cochaired





(with the Department of State) the Structural Issues Working Group of the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy; this group's joint report included commitments by the government of Japan to strengthen its antitrust enforcement program. Similarly, the Division worked with USTR and other domestic agencies on the successful conclusion of the World Trade Organization (WTO) negotiations on basic telecommunications issues, which included agreement on a Reference Paper on interconnection rules and other transitional competition-related safeguards. Although the Reference Paper does not directly affect antitrust enforcement, it does establish a minimum level of effective (non-antitrust) regulation for governments to employ in liberalizing former monopoly telecom markets.

The Division also participates in discussions in the increasing number of international fora, including the OECD, NAFTA, the Asia Pacific Economic Cooperation, and the negotiations for the Free Trade Area of the Americas (FTAA), in which antitrust and competition policy issues are discussed. In addition, the Division has participated (with other U.S. agencies) during the past three years in discussions of the WTO working group on the relationship between trade and competition policy.

In 1997, Attorney General Reno and Assistant Attorney General for Antitrust Klein established an International Competition Policy Advisory Committee (ICPAC) to examine the changing international environment from an outside-the-Division perspective. ICPAC devoted special attention to

three key issues: (1) How can we build a consensus among governments for cooperation and effective prosecution of international cartels? (2) How should we deal with the proliferation of premerger notification requirements and merger laws around the world, so as to achieve sound results for both consumers and merging firms? (3) How should we deal with the complex relationships between trade and compe-

tition? ICPAC, which was cochaired by former Assistant Attorney General Jim Rill and former U.S. International Trade Commission Chairwoman Paula Stern, met several times and held hearings in which antitrust officials from around the world as well as a wide range of U.S. witnesses participated. ICPAC's report was issued in February 2000.

## Antitrust Division Selected Criminal Cases

April 1, 1996 through September 30, 1999

### Vitamins

The vitamin cartel is the most pervasive and harmful criminal antitrust conspiracy ever uncovered by the Division. The members of the vitamin cartel reached agreements on everything from how much product each company would produce, to how much they would charge, to which customers they would sell. The victims of this conspiracy were the purchasers of the vitamins most commonly used as nutritional supplements or to enrich human food and animal feed. However, in the final analysis, the conspiratorial conduct of the cartel members affected the pocketbook of virtually every American consumer who took a daily vitamin supplement or who had a bowl of cereal in the morning.

The vitamin investigation has thus far resulted in convictions against Swiss, German, Canadian, and Japanese firms and over \$875 million in criminal fines against the corporate defendants, including a \$500 million fine imposed on E. Hoffmann-La Roche Ltd. (HLR) and a \$225 million fine imposed on BASF AG. The \$500 million fine imposed against HLR is the largest fine ever imposed in any Department of Justice proceeding under any statute.



The Antitrust Division also has thus far prosecuted seven U.S. and foreign executives who participated in the vitamin cartel. All of these individuals, including the foreign defendants, are either already serving time in federal prison or are awaiting sentencing and face potential jail sentences as well as heavy fines. For example, Kuno Sommer, the former Director of Worldwide Marketing for Vitamins at HLR, and Roland Brönnimann, the former President of the Fine Chemical and Vitamin Division at HLR, were recently sent to prison and ordered to pay substantial fines for their roles in the vitamin cartel. Messrs. Sommer and Brönnimann are the first European nationals to serve time in a U.S. prison for engaging in cartel activity.

The vitamins cases brought thus far are as follows:

- *United States v. Lonza, AG*, (N.D. Tex. 1998) (Swiss firm; defendant agreed to \$10.5 million fine in plea agreement)
- *United States v. John Kennedy*, (N.D. Tex. 1999) (U.S. citizen; 12 months incarceration; \$20,000 fine)
- *United States v. Lindell Hilling*, (N.D. Tex. 1999) (U.S. citizen; defendant agreed to incarceration for period of 12 months and \$20,000 fine in plea agreement)
- *United States v. John L. "Pete" Fischer*, (N.D. Tex. 1999) (U.S. citizen; defendant agreed to incarceration for period of 8 months and \$20,000 fine in plea agreement)
- *United States v. Robert Samuelson*, (N.D. Tex. 1999) (U.S. citizen; awaiting sentencing)
- *United States v. Antonio Felix*, (N.D. Tex. 1999) (Mexican citizen; awaiting sentencing)
- *United States v. F. Hoffmann-La Roche, Ltd.*, (N.D. Tex. 1999) (Swiss firm; \$500 million fine)
- *United States v. BASF AG*, (N.D. Tex. 1999) (German firm; \$225 million fine)
- *United States v. Dr. Kuno Sommer*, (N.D. Tex. 1999) (Swiss citizen; 4 months incarceration, \$100,000 fine)
- *United States v. Dr. Roland Brönnimann*, (N.D. Tex. 1999) (Swiss citizen; defendant agreed to 5 months incarceration and \$150,000 fine in plea agreement)
- *United States v. Daiichi Pharmaceutical Co., Ltd.*, (N.D. Tex. 1999) (Japanese firm; defendant agreed to \$25 million fine in plea agreement)
- *United States v. Eisai Co., Ltd.*, (N.D. Tex. 1999) (Japanese firm; defendant agreed to \$40 million fine in plea agreement)
- *United States v. Takeda Chemical Industries, Ltd.*, (N.D. Tex. 1999) (Japanese firm; defendant agreed to \$72 million fine in plea agreement)
- *United States v. Chinook Group Ltd.*, (N.D. Tex. 1999) (Canadian firm; defendant agreed to \$5 million fine in plea agreement)

### Graphite Electrodes

The Division cracked a conspiracy to fix the price and allocate market shares worldwide for graphite electrodes used in electric arc furnaces in steel mills to melt scrap steel. As a result of this conspiracy, steel makers, whose products are integral to a variety of business and consumer items, paid noncompetitive and higher prices for graphite electrodes used in the manufacturing process. Total sales of graphite electrodes in the United States during the term of the conspiracy were well over one billion dollars.

The graphite electrodes investigation was sparked by cooperation received from an applicant to the Division's Corporate Leniency Policy, which led directly to the execution of search warrants. The investigation uncovered evidence that the members of the graph-

ite electrodes cartel met in the United States, Far East, and Europe and agreed to fix prices and allocate volume on a region-by-region basis around the globe. In addition, the conspirators agreed to restrict capacity for producing graphite electrodes, to restrict non-conspirator companies' access to graphite electrode manufacturing technology, and, further, to exchange sales and customer information to monitor and enforce the conspiracy.

An American, German, and two Japanese companies have pled guilty and agreed to cooperate with the Division's ongoing investigation. Two of the companies, UCAR International and SGL Carbon AG, were fined \$110 million and \$135 million, respectively, for their participation in the conspiracy. In addition, two U.S. executives pled guilty and have agreed to pay fines of more than \$1 million each and to serve



prison terms of 9 months and 17 months, respectively, and a German executive was fined \$10 million—the largest criminal antitrust fine ever imposed on an individual—for their roles in the international conspiracy.

The graphite electrodes cases brought thus far are as follows:

- *United States v. UCAR International, Inc.*, (E.D. Pa. 1998) (U.S. firm; \$110 million fine)
- *United States v. Showa Denko Carbon, Inc.*, (E.D. Pa. 1998) (Japanese firm; \$32.5 million fine)
- *United States v. Tokai Carbon Company, Ltd.*, (E.D. Pa. 1999) (Japanese firm; \$6 million fine)
- *United States v. SGL Carbon AG and Robert Koehler*, (E.D. Pa. 1999) (German firm; \$135 million. German citizen; \$10 million fine)
- *United States v. Robert J. Hart*, (E.D. Pa. 1999) (U.S. citizen; defendant agreed to serve 9 months incarceration and to pay a \$1 million fine in plea agreement)
- *United States v. Robert P. Krass*, (E.D. Pa. 1999) (U.S. citizen; defendant agreed to serve 17 months incarceration and to pay a \$1.25 million fine in plea agreement)

## Lysine

The lysine investigation broke up an international price-fixing and volume-allocation agreement among the world's major producers of lysine. Lysine, a feed additive used by farmers in livestock feeds, is a \$600 million-a-year industry

worldwide. The members of the lysine cartel reached agreements to carve up the world market by allocating sales volumes among themselves and agreeing on what prices would be charged to customers worldwide. As a result, prices went up about 70 percent in the first three months of the conspiracy alone.



Beginning with the first round of charges in August 1996, the investigation has resulted in the conviction of five companies, including two Japanese and two Korean companies, and six of their executives; it has also yielded nearly \$100 million in criminal fines, including a \$70 million fine against Archer Daniels Midland Company (ADM). (ADM was fined an additional \$30 million for its participation in a separate conspiracy in the citric acid market and paid a total fine of \$100 million.) The investigation culminated with the jury trial of three former high-ranking ADM executives for their participation in the lysine cartel. In September 1998, after a ten-week trial, a Chicago jury returned guilty verdicts against all three executives. The ADM executives were subsequently sentenced

to serve lengthy prison sentences ranging from 24 to 30 months, and two of the executives were fined \$350,000 each.

ADM's \$100 million fine, imposed in October 1996, represented the first time that the Division utilized the

alternative fine provision in order to obtain a fine greater than the Sherman Act statutory maximum of \$10 million. The alternative fine provision, found in 18 U.S.C. Section 3571(d), permits imposition of a fine equal to twice the gain to the cartel or twice the loss to the victims. As a result, the landscape for corporate antitrust fines has changed dramatically. Whereas prior to ADM's sentencing there were no

fines above the \$10 million Sherman Act statutory cap, fines of \$10 million or more are now common, and five defendants have been fined \$100 million or more.

A list of all of the lysine cases follows:

- *United States v. Ajinomoto Co., Inc.*, (N.D. Ill. 1996) (Japanese firm, defendant agreed to \$10 million fine in plea agreement)
- *United States v. Kyowa Hakko Kogyo Co. Ltd.*, (N.D. Ill. 1996) (Japanese firm, \$10 million fine)
- *United States v. Sewon America, Inc.*, (N.D. Ill. 1996) (U.S. subsidiary of Korean company, \$328,000 fine)

- *United States v. Kanji Mimoto*, (N.D. Ill. 1996) (Japanese citizen, \$75,000 fine)
- *United States v. Masaru Yamamoto*, (N.D. Ill. 1996) (Japanese citizen, \$50,000 fine)
- *United States v. Jhom Su Kim*, (N.D. Ill. 1996) (Korean citizen, \$75,000 fine)
- *United States v. Archer Daniels Midland, Co.*, (N.D. Ill. 1996) (U.S. firm, \$100 million fine: \$70 million fine for lysine and \$30 million fine for citric acid)
- *United States v. Cheil Jedang, Ltd.*, (N.D. Ill. 1996) (Korean company, \$1.25 million fine)
- *United States v. Michael D. Andreas; Mark E. Whitacre; Terrance S. Wilson; and Kazutoshi Yamada*, (N.D. Ill. 1996) (Andreas, Whitacre and Wilson, all U.S. citizens, convicted at trial; Andreas and Wilson each sentenced to serve 24 months incarceration and to pay fines of \$350,000; Whitacre sentenced to serve 30 months incarceration with 10 months to be served concurrently with a prison sentence he was already serving for another offense and 20 months to be served consecutively. Yamada, a Japanese citizen, did not appear at trial and remains a fugitive.)

### Citric Acid

The Division's investigation and prosecution of an international cartel among U.S. and European producers of citric acid put an end to one of the most

sophisticated and sweeping anticompetitive schemes ever uncovered by the Division. Citric acid, a flavor additive and preservative in such products as soft drinks and processed foods, found in nearly every home in the United States, as well as in detergents, pharmaceuticals and cosmetic products, is a \$1.2 billion-a-year industry worldwide. The conspirators agreed to fix prices and allocate sales volumes in the citric acid market worldwide. The conspirators also agreed on complex systems to monitor and enforce the agreements. For example, the conspirators devised a compensation system whereby the cartel members reviewed the sales of each conspirator at the end of the year, and any company that sold more than its precisely allotted share in one year was required in the following year to purchase the excess from another conspirator that had not reached its volume allocation target in that preceding year. As a result of the conspiracy, list prices for citric acid were raised by more than 30 percent to customers in the United States during the conspiracy period, resulting in well over \$100 million in additional revenue to the members of the conspiracy.

Beginning with the first round of charges in October 1996, the citric acid investigation has resulted in convictions against five corporations, including U.S., German, Swiss, and Dutch firms, and four of their executives. In addition, over \$100 million in criminal fines—including a \$50 million fine imposed on Haarmann & Reimer Corporation, the U.S. subsidiary of the German pharmaceutical giant Bayer AG—have been obtained against the convicted defendants.



A list of all of the citric acid cases follows:

- *United States v. Archer Daniels Midland Co.*, (N.D. Cal. 1996) (U.S. firm, \$100 million fine; \$70 million fine for lysine and \$30 million fine for citric acid)
- *United States v. Haarmann & Reimer Corp. and Hans Hartmann*, (N.D. Cal. 1997) (U.S. subsidiary of German company, \$50 million fine; German citizen, \$150,000 fine)
- *United States v. F. Hoffmann-La Roche. Ltd. and Udo Haas*, (N.D. Cal. 1997) (Swiss firm, \$14 million fine; Swiss citizen, \$150,000 fine)
- *United States v. Jungbunzlauer International AG Rainer Bichlbauer*, (N.D. Cal. 1997) (Swiss firm, \$11 million fine; Swiss citizen, \$150,000 fine)
- *United States v. Cerestar Bioproducts BV and Sylvio Kluzer*, (N.D. Cal. 1998) (Dutch firm, \$400,000 fine; Italian citizen, \$40,000 fine)

### Sodium Gluconate

The Division's investigation of an international conspiracy to suppress and eliminate competition in the worldwide sodium gluconate industry arose from information received from cooperating defendants in the lysine and citric acid investigations. Sodium gluconate is an industrial cleaner with many applications, such as food service and utensil cleaning, bottle washing, and paint removal. The Division's investigation unraveled a conspiracy to fix prices and allocate sales volumes worldwide among the world's major producers of sodium gluconate.

To date, the sodium gluconate investigation has led to criminal charges against Dutch, French, and Japanese companies and their foreign executives and has resulted in over \$30 million in criminal fines. One of the industry leaders, Fujisawa Pharmaceutical Co., Ltd., a Japanese corporation, agreed to plead guilty and pay a fine of \$20 million for its participation in the conspiracy.

A list of all of the sodium gluconate cases brought thus far follows:

- *United States v. Akzo Nobel Chemicals BV and Glucona BV*, (N.D. Cal. 1997) (Dutch firms, \$10 million fine)
- *United States v. Cornelis R. Nederveen*, (N.D. Cal. 1997) (Dutch citizen, \$100,000 fine)
- *United States v. Marcel Van Eekhout*, (N.D. Cal. 1997) (Dutch citizen, \$100,000 fine)
- *United States v. Fujisawa Pharmaceutical Co., Ltd. and Akira Nakao*, (N.D. Cal. 1998) (Japanese firm, \$20 million fine; Japanese citizen, \$200,000 fine)
- *United States v. Roquette Freres and Bertrand Dufour*, (N.D. Cal. 1997) (French firm, \$2.5 million fine; French citizen, \$50,000 fine)

### Sorbates

The Division's investigation and prosecution of a seventeen-year international conspiracy among U.S., German, and Japanese producers of sorbates began as a matter transferred to the Division by the FTC. Sorbates (sorbic



acid and potassium sorbate) are chemical preservatives used primarily to prevent mold in food products, such as cheese and baked goods. Sales are over \$250 million a year worldwide. The Division's investigation uncovered one of the longest-running and durable international cartels ever prosecuted, a conspiracy which affected over \$1 billion in U.S. sales.

The sorbates conspirators agreed to fix sorbates prices and allocate the market shares of sorbates sold worldwide, including the United States. Meetings among the producers were held in Japan and Europe throughout the seventeen-year conspiracy. The producers established several levels of target prices in the U.S. market based on the size of the customers and agreed to announce price increases on different dates to avoid detection of collusion. To date, three corporations and two executives have pled guilty and have agreed to pay fines totaling over \$68 million.

The sorbates cases brought thus far are as follows:

- *United States v. Eastman Chemical Company*, (N.D. Cal. 1998) (U.S. firm, \$11 million fine)
- *United States v. Hoechst AG*, (N.D. Cal. 1999) (German firm, \$36 million fine)
- *United States v. Bernd Romahn*, (N.D. Cal. 1999) (German citizen, \$250,000 fine)
- *United States v. Nippon Gohsei*, (N.D. Cal. 1999) (Japanese firm, \$21 million fine)



- *United States v. Hiromi Ito*, (N.D. Cal. 1999) (Japanese citizen, \$350,000 fine)

### **Marine Construction And Transportation**

In December 1997, the Division charged a company from The Netherlands and one of its foreign executives with participating in an international cartel in marine construction services and a company from Belgium, its U.S. subsidiary, and two of its foreign executives with participating in a separate international cartel in marine transportation services. The three related firms, which have a common parent, agreed to plead guilty and to pay a total of \$65 million in criminal fines.



In the marine construction cartel, the conspirators reached an agreement to allocate customers and agree on pricing for heavy-lift derrick barge and related marine construction services in the major oil and gas production regions of the world. Heavy-lift derrick barges are floating crane vessels with a capacity to lift heavy structures, such as the decks of offshore oil and gas drilling and production platforms, in a marine environment. The conspirators originally targeted marine construction contracts in the North Sea. The conspiracy then grew to include projects in the Gulf of Mexico and next expanded to include the Far East. Members of the cartel met in the United States, The Netherlands, Italy, Turkey, and elsewhere to carry out their conspiracy. Worldwide revenues on the fixed contracts were in excess of \$1 billion.

In the marine transportation cartel, the conspirators colluded on semisubmersible heavy-lift transport services to

customers in the United States and throughout the world. Semisubmersible heavy-lift transport ships are ocean-going vessels that partially submerge to carry extremely large cargo, most commonly oil rigs and other ships, across long distances in the open ocean. Its customers include drilling contractors and the U.S. Navy. The conspirators met in a number of locations in Europe, the United States, and elsewhere and agreed to share information about upcoming jobs, prices quoted to customers, fleet positions, and other aspects of their internal operations. The parties then would agree on which jobs each would service, pool the revenues from all customers, and then divide up the profits according to a complex formula developed by the cartel. Bids on contracts let by the U.S. Navy were rigged by the conspirators as part of their agreement, and these contracts were included in the pool of revenues and profits divided by the cartel. In connection with the guilty pleas, the U.S.

Navy was paid civil damages for the rigged contracts.

The marine construction and transportation cases brought thus far are as follows:

- *United States v. HeereMac, v.o.f. and Jan Meek*, (N.D. Ill. 1997) (Dutch firm, \$49 million fine; Dutch citizen, \$100,000 fine)
- *United States v. Dockwise, N.V., Dockwise U.S.A. Inc., Christiaan Bernardus van der Zwan, and Bastiaan Albertus de Jong*, (N.D. Ill. 1997) (Belgian firm, \$15 million fine; U.S. subsidiary of Belgian firm, \$1 million fine; Dutch citizen, \$150,000 fine; Dutch citizen, \$75,000 fine)
- *United States v. Vincent Oliveri*, (S.D. Tex. 1999) (Italian citizen, trial pending)
- *United States v. Littleton E. Walker*, (S.D. Tex. 1999) (U.S. citizen, awaiting sentencing)
- *United States v. ICI Explosives USA, Inc.*, (N.D. Tex. 1995) (\$10 million fine)\*
- *United States v. Withers Waller Caldwell*, (N.D. Tex. 1995) (\$50,000 fine)\*
- *United States v. Dyno Nobel, Inc.*, (N.D. Tex. 1995) (\$15 million fine)\*
- *United States v. Mine Equipment and Mill Supply, Inc.*, (N.D. Tex. 1995) (\$1.9 million fine)\*
- *United States v. Explosives Technologies International, Inc.*, (N.D. Tex. 1996) (\$950,000 fine)\*
- *United States v. Amos Dolby Co.*, (W.D. Pa. 1996) (\$90,000 fine)
- *United States v. DC Guelich Explosive Co.*, (W.D. Pa. 1996) (\$200,000 fine)
- *United States v. Douglas Explosive, Inc.*, (W.D. Pa. 1996) (\$70,000 fine)
- *United States v. Hilltop Energy, Inc.*, (W.D. Pa. 1996) (\$330,000 fine)
- *United States v. Kesco, Inc.*, (W.D. Pa. 1996) (\$100,000 fine)
- *United States v. Ren-Loi, Inc.*, (W.D. Pa. 1996) (\$112,000 fine)
- *United States v. Austin Powder Co.*, (N.D. Tex. 1996) (\$7 million fine)
- *United States v. Thomas Mechtenberg*, (N.D. Tex. 1996) (\$20,000 fine)

## Explosives

This investigation of regional and national conspiracies to fix prices for certain commercial explosives, such as dynamite, ammonium nitrate, and blasting agents, has resulted in guilty pleas by 14 corporations and 3 individuals and total fines of nearly \$40 million. The commercial explosives subject to these conspiracies are those used in coal and metal mining, quarry operations, construction, and oil and gas production and account for about \$1 billion in sales annually. (An asterisk after the case name denotes prosecutions filed prior to the reporting period.)

- *United States v. LaRoche Industries, Inc.*, (W.D. Pa. 1997) (\$1.5 million fine)
- *United States v. Donald J. Westmaas*, (N.D. Tex. 1997) (\$44,580 fine)
- *United States v. Nutrite Corporation*, (W.D. Pa. 1997) (\$1.5 million fine)
- *United States v. David P. True*, (W.D. Ky. 1997) (acquitted at trial)
- *United States v. Joseph H. Longmire*, (W.D. Ky. 1997) (\$50,000 fine, 4 months house arrest)

### Point-of-Purchase Display Materials

The Division's New York and Chicago Field Offices are conducting parallel investigations and prosecutions of bid-rigging by suppliers of point-of-purchase (POP) display materials, such as plastic and neon signs, lamps, lights, or other promotional equipment used in bars, liquor stores, and restaurants. In addition to the bid-rigging offenses, the investigations have uncovered commercial bribery, income tax evasion, fraud, and money laundering violations. (An asterisk after the case name denotes prosecutions filed prior to the reporting period.)

**New York.** The New York Field Office investigation thus far has resulted in the filing of 29 cases against 24 individuals and 9 corporations. Seventeen individuals and seven corporations have been sentenced to date resulting in fines totaling over \$5 million, court-ordered restitution in excess of \$1 million, and individual jail sentences of up to 30 months. In addition, roughly \$5 million in back taxes have been

recovered and private restitution agreements have totaled over \$10 million. The investigation, which is being conducted in cooperation with the United States Attorney's Office for the Southern District of New York and with substantial assistance from agents of the FBI and the IRS, is continuing.

**Chicago.** The Division's Chicago Field Office, with the assistance of the FBI, has filed six criminal cases against two corporate and five individual defendants arising out of an investigation of antitrust and related federal offenses in the sale of point-of-purchase displays to two U.S. breweries, Anheuser-Busch Co., Inc. and Miller Brewing Company. The Chicago investigation exposed two conspiracies to fix prices, rig bids, and allocate customers involving three of the four major producers of point-of-purchase display materials beginning in the mid-1980s and ending in 1996. The volume of commerce affected by these long-running illegal agreements exceeded \$75 million. The largest of the conspiring POP producers, Everbrite, Inc., pled guilty to participating in both conspiracies and paid a \$9 million fine. Two Everbrite executives also pled guilty and were sentenced to 12 months and 13 months incarceration, respectively. In addition, two of the four individual defendants were sentenced to pay the statutory maximum fine of \$350,000. The investigation also uncovered a conspiracy to defraud Miller Brewing Company by one of its purchasing agents who received kickbacks from POP display vendors over a multiyear period. The purchasing agent pled guilty to conspiring to commit wire fraud in connection with the request and receipt of those payments.

**New York Cases**

- *United States v. Jomar Displays, Inc.*, (S.D.N.Y. 1993) (\$175,000 fine)\*
- *United States v. Louis Cappelli*, (S.D.N.Y. 1994) (6 months incarceration, 6 months community confinement, \$296,000 fine)\*
- *United States v. Bert Levine*, (S.D.N.Y. 1994) (6 months incarceration, \$5,000 fine)\*
- *United States v. Richard T. Billies and Sidney Rothenberg*, (S.D.N.Y. 1994) (6 months house arrest each, \$100,000 fine each)\*
- *United States v. Robert Berger*, (S.D.N.Y. 1994) (10 months house arrest, \$3,000 fine)\*
- *United States v. John Clemence*, (S.D.N.Y. 1995) (4 months house arrest, \$100,000 fine)\*
- *United States v. Eugene Veltri*, (S.D.N.Y. 1995) (3 months house arrest)\*
- *United States v. Richard Sanislo*, (S.D.N.Y. 1995) (\$2,500 fine)\*
- *United States v. Richard Rituno and Consumer Displays, Inc.*, (S.D.N.Y. 1995) (Rituno: 6 months incarceration, \$10,000 fine; Consumer Displays: \$175,000 fine)\*
- *United States v. Harvey Shayew*, (S.D.N.Y. 1995) (4 months house arrest, \$75,000 fine)\*
- *United States v. Southern Container Corp.*, (S.D.N.Y. 1996) (\$2.5 million fine)
- *United States v. Dani Siegel, Visart M&F Corp., and Genetra Affil.*, (S.D.N.Y. 1996) (awaiting sentencing)
- *United States v. Michael Heinrich*, (S.D.N.Y. 1996) (6 months house arrest)
- *United States v. Winko, Inc.*, (S.D.N.Y. 1996) (\$1.1 million fine)
- *United States v. Manufacturers Corrugated Box Co.*, (S.D.N.Y. 1996) (\$400,000 fine)
- *United States v. Irwin Englander*, (S.D.N.Y. 1997) (awaiting sentencing)
- *United States v. Leslie Sutorius*, (S.D.N.Y. 1997) (2 months house arrest, \$5,000 fine)
- *United States v. Grinnell Lithographic Co.*, (S.D.N.Y. 1997) (\$55,000 fine)
- *United States v. Gabriel Sagaz*, (S.D.N.Y. 1998) (awaiting sentencing)
- *United States v. Peter Zanone*, (S.D.N.Y. 1998) (4 months incarceration)
- *United States v. Brian McCormack*, (S.D.N.Y. 1998) (30 months incarceration, \$750,000 restitution)
- *United States v. Target Graphics, Inc.*, (S.D.N.Y. 1998) (\$100,000 fine)
- *United States v. Bruce Schwartz*, (S.D.N.Y. 1998) (12 months incarceration)

- *United States v. Edward Lundberg*, (S.D.N.Y. 1999) (12 months incarceration)
- *United States v. Mary Burke*, (S.D.N.Y. 1999) (9 months home confinement, \$275,000 restitution)
- *United States v. John Mavros*, (S.D.N.Y. 1999) (awaiting sentencing)
- *United States v. Peter Lanigan*, (S.D.N.Y. 1999) (awaiting sentencing)
- *United States v. Leslie Schneiderman*, (S.D.N.Y. 1999) (awaiting sentencing)
- *United States v. Martin Cohen*, (S.D.N.Y. 1999) (awaiting sentencing)

### Chicago Cases

- *United States v. Ronald Harrison*, (E.D. Wis. 1996) (5 months house arrest, \$2,500 fine)
- *United States v. Zelman Levine*, (E.D. Wis. 1996) (4 months house arrest, \$350,000 fine)
- *United States v. Schutz International, Inc. and Richard Machas*, (E.D. Wis. 1997) (Schutz: \$500,000 fine; Machas: 4 months house arrest, \$150,000 fine)
- *United States v. Everbrite, Inc.*, (E.D. Wis. 1997) (\$9 million fine)
- *United States v. Jon S. Wamser*, (E.D. Wis. 1997) (13 months incarceration, \$350,000 fine)
- *United States v. Henry C. Zeni*, (E.D. Wis. 1997) (12 months incarceration, \$180,000 fine)

### Real Estate Foreclosure Auctions

The Division's New York Field Office and Litigation I Section in Washington, D.C. helped crack separate bid-rigging conspiracies designed to artificially lower public auction prices at real estate foreclosure auctions in Queens, New York, and Northern Virginia, respectively. The conspiracies, both of which existed for at least a decade, operated in a similar fashion. Real estate brokers and investors secretly agreed not to compete against each other at real estate foreclosure auctions. Instead, one member of a conspiracy would bid the lowest price possible to win the property. Then, after the formal auction, the conspirators would hold a second private or "knockout" auction at which the conspirators would actively bid against each other for the foreclosed property. The winner of this second, secret auction would make illicit "commission" or "premium" payoffs to the others to compensate them for not bidding at the public auction. The Queens conspirators often used harassment, intimidation, and distraction tactics to scare off outside bidders, thus ensuring that they would get the lowest possible price for the property. Among the victims of these conspiracies were many lower-middle-class individuals who had lost their homes and were denied competitive bidding for their homes at the foreclosure auction. (An asterisk after the case name denotes prosecutions filed prior to the reporting period.)

**Queens, New York.** The prosecution of the Queens bid-rigging conspiracy

has been jointly conducted by the Division's New York Field Office and the U.S. Attorney's Office for the Eastern District of New York, with substantial assistance provided by FBI and IRS agents. The investigation uncovered a conspiracy beginning in the mid-1980s and continuing until search warrants were executed in February 1997. Over 400 properties were affected by this conspiracy. The investigation thus far has resulted in the filing of cases against 35 individuals, including 26 cases filed on the same day. Most of the defendants were charged with felony tax offenses in addition to the bid-rigging counts. All 35 defendants pled guilty. Over half of the defendants sentenced to date received some period of incarceration. As a result of this investigation, public foreclosure auctions in Queens are now conducted in a courtroom inside the Queens County Courthouse with strict rules governing the auction process. Moreover, it has been reported that there are more bidders today than ever and that houses are being auctioned off at record high prices. The investigation also provided leads to a similar bid-rigging scheme in Brooklyn, New York, which has already led to 14 additional cases.

**Northern Virginia.** Eight individuals have pled guilty and three individuals have been convicted at jury trials thus far in the Northern Virginia investigation. The crimes charged against the conspirators have included bid-rigging, wire fraud, bank fraud, conspiracy to defraud the United States, and mail fraud. Eight of the individuals have been sentenced to date, with jail sentences ranging from 7 months to 60 months incarceration. The convictions of two of the defendants have been upheld by the

Fourth Circuit, and the Supreme Court recently denied their petition for certiorari. The continuing investigation is being conducted with the assistance of the FBI.

### **Queens, New York Cases**

- *United States v. Danny Abrishamian*, (E.D.N.Y. 1998) (12 month probation, \$20,000 fine)
- *United States v. Ted Adeli*, (E.D.N.Y. 1998) (24 months probation, \$5,000 fine)
- *United States v. Joseph Attarian*, (E.D.N.Y. 1998) (3 months incarceration, 3 months house arrest, \$20,000 fine)
- *United States v. Albert Babajianian*, (E.D.N.Y. 1998) (1 month incarceration, 3 months house arrest, \$5,000 fine)
- *United States v. Glen Bakhshi*, (E.D.N.Y. 1998) (3 months incarceration, 3 months house arrest, \$20,000 fine)
- *United States v. Ramin Baratian*, (E.D.N.Y. 1998) (1 month incarceration, \$20,000 fine)
- *United States v. Steve Bloor*, (E.D.N.Y. 1998) (3 months incarceration, 3 months house arrest, \$20,000 fine)
- *United States v. Yoram Eliyahu*, (E.D.N.Y. 1998) (24 months probation, \$20,000 fine)
- *United States v. Farshad Haghi*, (E.D.N.Y. 1998) (24 months probation, \$20,000 fine)

- *United States v. Henry Khani*, (E.D.N.Y. 1998) (2 months incarceration, 2 months house arrest, \$5,000 fine)
- *United States v. John Khani*, (E.D.N.Y. 1998) (4 months incarceration, 4 months house arrest, \$20,000 fine)
- *United States v. Kevin Khani*, (E.D.N.Y. 1998) (2 months incarceration, 2 months house arrest, \$5,000 fine)
- *United States v. Daniel Kimia*, (E.D.N.Y. 1998) (2 months incarceration, 2 months house arrest, \$20,000 fine)
- *United States v. David Kimia*, (E.D.N.Y. 1998) (2 months incarceration, 2 months house arrest, \$20,000 fine)
- *United States v. Maurice Koban*, (E.D.N.Y. 1998) (4 months house arrest, \$20,000 fine)
- *United States v. Joseph Makhani*, (E.D.N.Y. 1998) (2 months incarceration, 2 months house arrest, \$20,000 fine)
- *United States v. Mike Makhani*, (E.D.N.Y. 1998) (3 months incarceration, 3 months house arrest, \$20,000 fine)
- *United States v. David Manesh*, (E.D.N.Y. 1998) (4 months incarceration, 4 months house arrest, \$20,000 fine)
- *United States v. Steve Manesh*, (E.D.N.Y. 1998) (24 months probation, \$20,000 fine)
- *United States v. Cyrus Niknamfard*, (E.D.N.Y. 1998) (12 months probation, \$20,000 fine)
- *United States v. Lisa Parvin*, (E.D.N.Y. 1998) (12 months probation, \$20,000 fine)
- *United States v. Joseph Rastegar*, (E.D.N.Y. 1998) (1 months incarceration, 2 months house arrest, \$20,000 fine)
- *United States v. Kamran Shahkoki*, (E.D.N.Y. 1998) (4 months house arrest, \$20,000 fine)
- *United States v. Firooz Tehbranchipour*, (E.D.N.Y. 1998) (12 months probation, \$20,000 fine)
- *United States v. Akbar Yasrabi*, (E.D.N.Y. 1998) (3 months house arrest, \$20,000 fine)
- *United States v. Itzhak Zivari*, (E.D.N.Y. 1998) (3 months house arrest, \$20,000 fine)
- *United States v. Alfred Basal*, (E.D.N.Y. 1998) (awaiting sentencing)
- *United States v. David Dilmanian*, (E.D.N.Y. 1998) (awaiting sentencing)
- *United States v. Albert Basal*, (E.D.N.Y. 1998) (awaiting sentencing)
- *United States v. Joseph Davoudzadeh*, (E.D.N.Y. 1998) (awaiting sentencing)



- *United States v. Allen Shahipour*, (E.D.N.Y. 1998) (12 months probation, \$20,000 fine)
- *United States v. Mansour Mehizadeh*, (E.D.N.Y. 1998) (12 months probation, \$20,000 fine)
- *United States v. Nicholas Cola*, (E.D.N.Y. 1998) (12 months probation, \$20,000 fine)
- *United States v. Alan Shams*, (E.D. Va. 1999) (4 months house arrest, \$20,000 fine, \$3,682 restitution)
- *United States v. Kenneth Arnold*, (E.D. Va. 1999) (5 months incarceration, 5 months house arrest, \$20,000 fine, \$54,624 restitution)
- *United States v. Edgar C. Dove, Jr.*, (E.D. Va. 1999) (awaiting sentencing)

### Northern Virginia Cases

- *United States v. Alexander Giap*, (E.D. Va. 1995) (60 months incarceration, \$100,000 restitution)\*
- *United States v. Donald Kotowicz*, (E.D. Va. 1995) (7 months incarceration, \$20,000 fine, \$15,000 restitution)\*
- *United States v. Leo Gulley*, (E.D. Va. 1995) (7 months incarceration, \$20,000 fine, \$12,000 restitution)\*
- *United States v. Frank Stinnett*, (E.D. Va. 1996) (36 months probation)
- *United States v. Mija Romer*, (E.D. Va. 1997) (18 months incarceration, \$20,000 fine, \$7,200 restitution)
- *United States v. Khem Batra*, (E.D. Va. 1997) (6 months house arrest, \$8,377 restitution)
- *United States v. Patricia Remele*, (E.D. Va. 1998) (\$16,800 restitution, 12 months probation)
- *United States v. Lawrence Rosen*, (E.D. Va. 1998) (4 months incarceration, 4 months house arrest; \$20,000 fine, \$33,978 restitution)

### Metal Buildings Installation

The Division, with the assistance of the FBI, uncovered a conspiracy to fix prices on insulation sold to metal building contractors and manufacturers. At the heart of the conspiracy was an agreement among national and regional insulation companies to adhere to a series of published price increases. Metal buildings are widely used for schools, churches, and synagogues, as well as for commercial structures, including factories and warehouses. To date, the Division has obtained convictions in five of the six cases in this investigation, including a guilty verdict after trial of one of the leaders of the conspiracy for price fixing and conspiracy to commit wire fraud. This individual received a sentence of 30 months incarceration and a \$30,000 fine.

The metal buildings installation cases brought thus far are as follows:

- *United States v. Huber Wallace Rhodes, Jr.*, (S.D. Tex. 1996) (defendant agreed to sentence of 4 months incarceration in plea agreement)
- *United States v. Jerrold Warren Killingsworth*, (S.D. Tex. 1996) (awaiting sentencing)

- *United States v. Yun Lung Yueh a/k/a Peter Yueh*, (S.D. Tex. 1996) (awaiting sentencing)
- *United States v. Hiplax International Corp. d/b/a Brite Insulation* (S.D. Tex. 1996) (defendant agreed to \$100,000 fine in plea agreement)
- *United States v. Mark Albert Maloof*, (S.D. Tex. 1997) (convicted at trial; sentenced to 30 months incarceration, \$30,000 fine)
- *United States v. Danny Two-Sheng Fong*, (S.D. Tex. 1999) (acquitted at trial)

## Antitrust Division Merger Challenges

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### ***Union Pacific Corp./Southern Pacific Rail Corp.*** (4/12/96)

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In comments filed with the Surface Transportation Board, the Division expressed its competitive concerns regarding the merger between Union Pacific Corp. and Southern Pacific Rail Corp. The Division noted that in a large number of markets throughout the western United States, the number of possible rail carrier competitors would decline from two to one or from three to two, which would likely result in price increases to shippers and consumers of approximately \$800 million. Thereafter, on July 3, 1996, the Surface Transportation Board approved the \$5.4 billion merger.

### ***United States v. Titan Wheel International, Inc.,*** (5/7/96)

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The Division filed a complaint which alleged that Titan Wheel International violated the premerger notification reporting requirements of the Hart-Scott-Rodino Act in connection with its \$41 million acquisition of a Pirelli Armstrong Tire Corp. plant in Des Moines, Iowa. According to the complaint, Titan took control of the Pirelli



assets, including the inventory, machinery, equipment, and customer and supplier lists, before the companies notified federal antitrust agencies about the acquisition. The Hart-Scott-Rodino Act of 1976 imposes notification and waiting period requirements on individuals and companies before they can consummate acquisitions of stock or assets over a certain value or ownership percentage. Titan was in continuous violation of the law until the purchase agreement in the acquisition was amended and control of the plant returned to Pirelli Armstrong—a total of 13 days. A proposed final judgment was filed simultaneously settling the suit, under which Titan agreed to pay a civil penalty in the amount of \$130,000. The final judgment was entered by the Court on May 10, 1996.

***Darling International, Inc./Modesto Tallow Company***  
(5/23/96)

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In response to the Division's competitive concerns, Darling abandoned its proposed acquisition of Modesto Tallow Company, a small rendering company located in Modesto, California and about thirty miles from Turlock. Had the merger gone forward, it could have resulted in increased prices in the tallow/rendering industry.

***UNC, Inc./CFC Aviation***  
(5/29/96)

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The Division did not oppose UNC's proposed \$150 million purchase of Phoenix-based CFC Aviation Services, L.P. after UNC divested one of its jet engine heavy maintenance businesses to Sabreliner. As originally structured, the acquisition would have lessened competition in the \$100 million market for heavy repair of Allied Signal's TFE 731 turbofan engines, the premier business jet engine in the United States. The merger would have combined the only independent service centers authorized by Allied Signal to perform heavy maintenance on the TFE 731.

***Smith International, Inc./Anchor Drilling Fluids***  
(6/5/96)

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The Division agreed to a modification of a 1994 consent decree allowing Smith International to purchase Anchor Drilling Fluids, provided that Smith divested Anchor's U.S. drilling fluids business. Drilling fluids are used in various drilling applications: they are pumped through drill pipes to cool and lubricate the cutting tools on the pipe, remove cuttings from the drill hole, and

control down hole pressure to prevent an explosion of the drill site. Smith was the majority owner of M-I, the largest drilling fluids company in the United States, and Anchor Drilling Fluids was the fourth largest producer and distributor of drilling fluids in the United States.

***Sinclair Broadcast Group, Inc./River City Broadcasting L.P.***  
(6/6/96)

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In response to the Division's concerns that the transaction posed serious antitrust concerns in the sale of radio advertising in the Columbus, Ohio market, Sinclair and River City agreed to restructure the transaction by amending their purchase agreement to exclude the Columbus station.

***ConAgra/Mrs. Smith's, Inc.***  
(6/7/96)

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ConAgra abandoned its plans to acquire 100 percent of Mrs. Smith's, a wholly-owned subsidiary of J.M. Smucker Company, after the Division expressed concern that the acquisition would have anticompetitive effects in the frozen pie market. Mrs. Smith's was the largest competitor in that market.

***United States v. American Skiing Company and S-K-I Limited***  
(6/11/96)

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The Division challenged the \$137 million acquisition of S-K-I Limited by American Skiing Company, and charged that the acquisition would raise prices and eliminate discounts for day skiing trips for Maine residents and weekend ski excursions for residents of Maine, eastern Massachusetts, eastern Connecti-

cut, and Rhode Island. A proposed final judgment was filed simultaneously with the complaint, requiring divestiture of New Hampshire ski resorts at Waterville Valley and Mount Cranmore. Without the divestiture, American Skiing would have controlled eight of the largest ski resorts serving skiers residing in the eastern portions of New England.

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***Cooper Cameron Corp./Ingram Cactus Co.***  
(6/13/96)

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In response to the Division's concerns that Cooper Cameron's \$98 million acquisition of Ingram Cactus would lessen competition in the U.S. market for geothermal wellheads and valves, Cooper Cameron agreed to license and supply certain oil well equipment and technology to a third company, Daniel Valve Co. Without this resolution, the merger would have combined the two largest suppliers of geothermal wellheads and valves and would have lessened competition for customers of important oil well equipment in the United States.

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***Park Corp./Johnstown Corp.***  
(6/17/96)

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In response to the prospect of an antitrust suit by the Division, Park Corp., the nation's largest producer of cast steel industrial equipment, abandoned its bid to buy Johnstown Corp. at a bankruptcy auction. Had Park been allowed to acquire Johnstown, it would have controlled a monopoly share of the markets for both cast steel work rolls and large slag pots, which could have resulted in increased prices for consumers.

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***Bank of Boston/BayBanks***  
(6/18/96)

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In response to the Division's concerns that the \$2 billion merger between Bank of Boston and BayBanks would lessen competition for banking services available to small and medium-sized businesses, the parties agreed to sell 20 bank branches located in the Boston metropolitan area, with total deposits of approximately \$860 million, to USTrust. The Division had conducted a joint investigation with the Office of the Massachusetts Attorney General.

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***United States, State of California, State of Connecticut, State of Illinois, Commonwealth of Massachusetts, State of New York, State of Washington, and State of Wisconsin v. The Thomson Corp. and West Publishing Company***  
(6/19/96)

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The Division challenged the \$3.4 billion merger of two of the nation's largest legal publishers, Thomson Corporation and West Publishing, alleging that the acquisition would lessen competition in 9 markets for enhanced primary law products (legal publications of statutes or court decisions in which commentary is offered) and in more than 50 markets for secondary law products (treatises and legal guides), as well as in the online services market. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The final judgment required the divestiture of more than 40 products by Thomson, guaranteed access to important databases, required Thomson to license openly (for a capped fee) other law publishers the right to use the pagination of individual pages in West's National Reporter System in their



products, and gave options to three states to reopen bidding for certain contracts.

***Genencor International, Inc./Solvay, S.A.***  
(7/1/96)

The Division announced that after it raised concerns that Genencor International's acquisition of Solvay's worldwide industrial enzyme business would lessen competition in U.S. markets for the sale of alpha amylase and glucoamylase enzymes, the transaction was restructured. Genencor agreed to license and supply technology relating to certain enzymes used to process starch to a third company, Nagase Biochemicals, Ltd. These enzymes are used for processing starch-containing raw materials (usually corn) into sugar-containing syrups (such as high-fructose corn syrup) and fuel alcohol.

***United States v. Jacor Communications, Inc. and Citicasters, Inc.***  
(8/5/96)

The Division challenged the \$770 million merger between Jacor and Citicasters, two of the nation's largest radio station owners. The complaint alleged that the combination would control more than 50 percent of the sales of radio advertising time in Cincinnati and could enable the companies to increase prices to advertisers and substantially reduce competition in the \$80 million Cincinnati radio advertising market. A proposed final judgment, filed simultaneously with the complaint, settled the suit. Jacor and Citicasters agreed to divest WKRQ-FM, a leading Cincinnati contemporary music station, to an independent buyer. The Jacor/Citicasters acquisition was one of the first of many radio industry transactions announced following passage of the Telecommunications Reform Act of 1996, which relaxed previous limits on radio ownership.

***Outdoor Systems, Inc./Gannett Co.***  
(8/12/96)

The Division announced that after it raised competitive concerns with Outdoor Systems' acquisition of the Outdoor Division of Gannett, Outdoor Systems agreed to sell its Denver billboard operations to another party. Both companies were leading competitors in the billboard advertising business in numerous areas across the country, but Denver was the only city in which both companies operated competitive billboard businesses.

***United States v. Foodmaker, Inc.***  
(8/13/96)

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The Division filed a compliant charging Foodmaker, of San Diego, California, with violating the Hart-Scott-Rodino premerger notification reporting requirements for acquiring all of the voting securities of Consul Restaurant Corporation without notifying federal antitrust authorities. Consul, which had operated 26 franchised Chi-Chi's restaurants, was acquired by Chi-Chi's, Inc., then a subsidiary of Foodmaker. Foodmaker was in violation of the law for a total of 471 days, from October 23, 1992 until February 5, 1994. Foodmaker agreed to pay a \$1.45 million civil penalty to settle the charges. The final judgment was entered by the Court on August 20, 1996.

***Ingersoll-Rand Company/  
Zimmerman International, Corp.***  
(8/29/96)

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In order to resolve the Division's competitive concerns with Ingersoll-Rand's acquisition of Zimmerman, a manufacturer of air balancers equipment primarily used to lift and move heavy objects on assembly lines, Ingersoll-Rand agreed to end its exclusive licensing agreement with another manufacturer, Knight Industries. The licensing agreement allowed Ingersoll-Rand to produce air balancers under its own brand name using Knight's technology. Eliminating the exclusive licensing agreement that allowed Knight to license others that wished to enter the industry ensured that competition was maintained in the manufacture and sale of air balancers.

***United States, State of Texas, and  
Commonwealth of Pennsylvania v.  
USA Waste Services, Inc. and  
Sanifill, Inc.***  
(8/30/96)

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The Division challenged the \$1.5 billion proposed merger between USA Waste and Sanifill, two of the largest waste hauling and disposal companies in North America. The complaint alleged that the acquisition would substantially lessen competition in the markets for small containerized hauling and disposal in Houston, Texas, and small containerized hauling in Johnstown, Pennsylvania. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required certain divestitures and included other provisions, including requiring municipal solid waste landfill capacity in Houston and Johnstown to be made available to independent haulers for a ten-year period.

***Westinghouse Air Brake Company/  
Vapor Corp.***  
(8/30/96)

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The Division announced that it would not oppose Westinghouse Air Brake Company's acquisition of Vapor Corp., a subway car door system supplier, after Westinghouse Air Brake agreed to sell its 50 percent interest in Westcode, another subway car door system supplier. Because Vapor Corp. and Westcode were the only U.S. subway and rail car door suppliers, the spin-off of Westcode ensured that the rail car door systems market in the United States would remain competitive.

***United States and State of Connecticut v. Oldcastle Northeast, Inc., CRH, plc, Tilcon, Inc., and BTR, plc (9/3/96)***

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The Division challenged the \$270 million deal between two companies that competed in the production of asphalt concrete, which is also known as blacktop and is used mainly for constructing or resurfacing roads, driveways, and parking lots. A proposed consent decree, filed simultaneously with the complaint, required Oldcastle to divest a quarry (East Granby, Connecticut) and two of the three asphalt plants located at the quarry. The transaction, as originally proposed, would have allowed Oldcastle Northeast to become the dominant asphalt concrete company in the greater Hartford area market with the power to increase prices.

***Fairmont Tamper/Pandrol Jackson's Tamper Business (9/10/96)***

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Fairmont Tamper, a subsidiary of Harsco Corporation, abandoned its plans to acquire Pandrol Jackson, formerly Jackson Jordan, after the Division expressed concerns that the acquisition would be anticompetitive and result in a high concentration in the automatic tamper market. Automatic tampers are maintenance-of-way-equipment used to realign a railroad track after the alignment is altered as a result of train traffic.

***Archer Daniels Midland Co./Gruma S.A. de C.V. (9/13/96)***

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The Division and the Texas Attorney General's Office announced that they would not oppose a \$280 million deal between America's two largest tortilla

flour manufacturers—Archer Daniels Midland Co. (ADM) and Grumman S.A.—after the companies agreed to divest a masa flour mill in the Texas panhandle. ADM was acquiring 22 percent of Gruma stock and forming a partnership with Gruma to combine the companies' U.S. masa flour mill operations. Masa flour is produced by the milling of cooked whole-kernel corn and is the primary ingredient in corn tortillas, taco shells, and tortilla chips. As originally structured, ADM and Gruma would have merged the six domestic masa flour mills of the two firms, creating a single dominant firm. The sale of the Texas mill ensured that the masa flour market in the United States remained competitive.

***United States and the State of New York v. American Radio Systems Corp., The Lincoln Group L.P., and Great Lakes Wireless Talking Machine LLC (10/24/96)***

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The Division challenged the proposed acquisition of three Rochester, New York, radio stations by American Radio Systems (ARS) from The Lincoln Group L.P. and a joint sales agreement between ARS and Great Lakes Wireless Talking Machine. The complaint alleged the acquisition was likely to raise radio advertising prices. A proposed final judgment, filed simultaneously with the complaint, allowed ARS to acquire two Rochester radio stations from The Lincoln Group, provided it divested the WHAM-AM, WVOR-FM, and WCMF-AM stations. The final judgment also required dissolution of the joint sales agreement, under which ARS had the sole right to sell all the advertising time of another station. This was the Division's first challenge ever to a radio joint sales agreement.



***United States v. US West, Inc. and Continental Cablevision, Inc.***  
(11/5/96)

The Division challenged the acquisition of Continental Cablevision, the third largest cable system operator in the nation, by US WEST, one of the seven Regional Bell Operating Companies. The complaint alleged that the partial acquisition would have resulted in a substantial lessening of competition in the market for dedicated telephone services, which include special access (dedicated lines linking high-volume business users with their chosen long-distance carriers) and local private line services (dedicated lines connecting multiple locations of an end-user within a given metropolitan area). At the same time, a proposed final judgment was filed that settled the case. As part of the proposed settlement, US WEST and the Boston-based Continental agreed to divest Continental's interest in Teleport Communications by December 31, 1998. The final judgment also prohibited the parties from appointing members to or participating in meetings of Teleport Communications' Board of Directors. In each of the relevant cities (Denver, Phoenix, Seattle, and Omaha, Nebraska), US WEST was the dominant provider of dedicated services, and Teleport Communications was one of only a small number of firms challenging US WEST's dominance.

***United States v. Westinghouse Electric Corp. and Infinity Broadcasting Corp.***  
(11/13/96)

The Division challenged the approximately \$4.9 billion acquisition of Infinity Broadcasting by Westinghouse Electric, a subsidiary of CBS, Inc. The

complaint alleged that the acquisition would have lessened competition substantially for radio advertising in the Philadelphia, Pennsylvania, and Boston, Massachusetts, markets, giving Westinghouse over 40 percent of the radio advertising revenues in each city, and would have eliminated competition for radio advertisers trying to reach particular demographic groups. A final judgment, filed simultaneously with the complaint, settled the suit. The decree required the divestiture of two radio stations: WMMR-FM in Philadelphia and WBOS-FM in Boston.

***Andersen Area Medical Center/ Greenville Hospital/Spartanburg Hospital***  
(12/9/96)

Three northwestern South Carolina hospital systems—Andersen Area Medical Center, Greenville Hospital System and Spartanburg Hospital System (collectively AGS)—abandoned plans to consolidate their operations after the Division expressed concerns that the merged hospitals would be able to force managed care plans to exclude other hospitals from their plans if they were to include any of the AGS hospitals in their panels. If the merger had been consummated, the merging parties would have had 60 to 70 percent of the area's hospital beds.

***StarKist Food, Inc./H.J. Heinz, Co./ Bumble Bee Seafoods/Unicord Public Company and Questor Partners***  
(12/10/96)

Unicord abandoned its plans to sell its Bumble Bee brand tuna to Questor Partners and to sell three Bumble Bee

plants in Puerto Rico, Ecuador, and California to StarKist after the Division noted its concerns to the parties. StarKist, a subsidiary of H.J. Heinz Company, and Bumble Bee, were the number one and two sellers of canned tuna respectively and major competitors in a highly concentrated market.

***United Security Bank/First Bank and Trust***  
(12/12/96)

After the Division expressed concerns that the merger between United Security Bank and First Bank and Trust would lessen competition for business banking services, the parties agreed to divest the Grove Hill, Clark County, Alabama branch, which alleviated Division concerns and preserved banking services. The merger, had it gone forward as originally structured, would have resulted in a monopoly in the town of Grove Hill.

***United States and State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.***  
(1/3/97)

The Division challenged Vail Resorts' \$310 million acquisition of Ralston Resorts and simultaneously filed a proposed final judgment requiring that Ralston's Arapahoe Basin Ski Resort be sold to a third party in order for the deal to go forward. The complaint alleged that, without the proposed divestiture, the merger would have lessened competition substantially in the Front Range skier market, likely resulting in higher prices

to skiers who live in Colorado's Front Range and ski at the resorts on day and overnight trips. The Front Range is the area east of the Rocky Mountains including the Colorado cities of Denver, Fort Collins, Boulder, and Colorado Springs. Vail Resorts owned the Vail, Beaver Creek, and Arrowhead Mountain ski resorts, and Ralston Resorts owned the Breckenridge, Keystone, and Arapahoe Basin ski resorts. The deal, as originally structured, would have resulted in the merged firm having more than 38 percent of the Front Range market.

***United States v. Signature Flight Support Corp.***  
(2/5/97)

The Division challenged Signature Flight Support's acquisition of International Aviation Palm Beach, Inc., alleging that the transaction, as proposed, would have reduced competition in the market for the provision of fixed base operation services at Palm Beach International Airport. Fixed base operations are facilities located at airports that provide flight support services, such as fueling and ramp and hanger space



rental to charter, private, and corporate aircraft operators. The complaint alleged that the acquisition, as originally structured, would likely have led to higher prices by creating a duopoly in the sale of jet fuel to aviation customers using the Palm Beach Airport. A proposed final judgment, filed simultaneously with the complaint, required Signature to divest certain assets and leaseholds of its fixed base operations business at Palm Beach International Airport.

***United States v. Figgie International, Inc. and Harry E. Figgie, Jr.***  
(2/13/97)

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The Division's complaint alleged a violation of the premerger notification and waiting period requirements of the Hart-Scott-Rodino Act and sought civil penalty of \$150,000. The complaint charged that Figgie International of Willoughby, Ohio, a manufacturer of industrial and consumer products and its founder, Harry E. Figgie, were in violation of the reporting requirements when Mr. Figgie acquired more than 15 percent of the voting securities of Figgie International. A proposed final judgment, filed simultaneously with the complaint, required each of the defendants to pay \$75,000 in civil penalties. The final judgment was entered by the Court on February 14, 1997.

***United States v. American Radio Systems Corp. and EZ Communications, Inc.***  
(2/27/97)

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The Division challenged the \$655 million acquisition of EZ Communications by American Radio Systems (ARS). The complaint alleged that the acquisition would have lessened compe-

tition substantially in the Sacramento, California radio advertising market and would have given ARS control over six of the 12 class B FM radio signals—the strongest and most competitively significant radio broadcasting signals—operating in the area and would have given ARS 36 percent of Sacramento's radio advertising revenues. A proposed final judgment, filed simultaneously with the complaint, required ARS to divest KSSJ-FM, a new age contemporary station in the process of being upgraded to class B status.

***United States v. EZ Communications, Inc. and Evergreen Media Corp.***  
(2/27/97)

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In a case related to the American Radio Systems case (see above) filed the same day, the Division challenged EZ's acquisition of six radio stations in Charlotte, North Carolina, from Evergreen Media Corporation. The complaint alleged that the acquisition would have lessened competition substantially in the Charlotte, North Carolina, radio advertising market. This was one of a series of transactions involving ARS and EZ that, without restructuring, would have resulted in ARS having 55 percent of Charlotte's radio advertising revenues. A proposed final judgment, filed simultaneously with the complaint, required divestiture of the largest rock format station in Charlotte, WRFX-FM. Following consummation of the merger between ARS and EZ, ARS (as EZ's successor) would become a party to the EZ/Evergreen action and would be required to fulfill EZ's divestiture obligation.

***Gulfstar Communications Inc./  
Demaree Media, Inc***  
(3/6/97)

Gulfstar Communications abandoned its efforts to acquire three Arkansas radio stations from Demaree Media after the Division expressed concerns that the deal would lead to higher advertising prices in Northwest Arkansas. Acquisition of the Demaree stations, together with other acquisitions by Gulfstar, would have given Gulfstar more than 62 percent of the 1995 advertising revenues in the Northwest Arkansas radio market.

***First Virginia Banks, Inc./Premier  
Bankshares Corp.***  
(3/18/97)

The Division required First Virginia Banks and Premier Bankshares to sell three branch offices in southwestern Virginia before going forward with their proposal merger. The divestitures, designed to preserve competition for loans and other banking services provided to individuals and small businesses, resulted from a joint investigation by the Division and the Office of the Virginia Attorney General.

***Pike Industries/Frank F. Whitcomb  
Construction Company***  
(3/28/97)

Pike Industries, a New Hampshire-based aggregate and asphalt concrete company, abandoned its efforts to acquire a quarry and two asphalt plants from a New Hampshire highway construction company after the Division expressed concerns that the deal would reduce competition and lead to higher prices for aggregate and asphalt concrete

in Vermont and New Hampshire. Aggregate is used in the production of both asphalt concrete and ready-mix concrete. Asphalt concrete, also known as blacktop, is used principally for constructing and resurfacing roads, driveways, and parking lots.

***United States and Commonwealth  
of Pennsylvania, State of New York,  
and State of Ohio, v. Cargill, Inc.,  
Akzo Nobel, N.V., Akzo Nobel, Inc.,  
and Akzo Nobel Salt, Inc.***  
(4/21/97)

The Division challenged the \$160 million merger between two of the nation's largest salt producers. The complaint alleged that the merger, as originally structured, would have lessened competition substantially in the bulk deicing salt market in the northeast interior of the country and in the food-grade evaporated salt market east of the Rocky Mountains. Deicing salt is medium or coarse grade rock salt bought in bulk by state and municipal governments for use in melting snow and ice on public roads. Cargill and Akzo were two of only four producers of bulk deicing salt in the \$100 million northeast interior market, an area which includes Rochester, Syracuse, and Buffalo, New York; Erie, Pennsylvania; and Burlington, Vermont. Food grade evaporated salt is a highly refined, extremely pure salt (meeting Food and Drug Administration standards for human consumption) that is added during food processing as a preservative and flavor-enhancing ingredient for a variety of baked, frozen, and canned foods. Cargill and Akzo were the second and third leading producers of food grade evaporated salt in the \$200 million market east of the Rocky Mountains. A proposed final judgment, filed



simultaneously with the complaint, required Cargill to sell several key assets to American Salt Company, a prospective new entrant. The assets included a stockpile of bulk deicing salt in Retsof, New York, a four-year salt supply contract from the Cargill and Akzo mines, and numerous salt depots for storage and transshipment of salt to customers. Cargill was also required to divest Akzo's Watkins Glen, New York, plant to alleviate competitive effects in the food-grade salt market.

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***Southern National Corp./United Carolina Bancshares***  
(4/29/97)

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Southern National and United Carolina Bancshares agreed to sell 20 North Carolina bank branch offices with total deposits of about \$488 million in order to address Division concerns that the merger would have lessened compe-

tition for banking services in 10 different geographic areas of North Carolina.

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***Northern States Power Company/ Wisconsin Energy Company***  
(5/16/97)

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Northern States Power Company and Wisconsin Energy terminated their merger agreement and abandoned their plans to consolidate after the Division stated its concerns and the Federal Energy Regulatory Commission disapproved the merger as proposed. The Division was concerned about possible anticompetitive effects in Wisconsin resulting from Northern's control over a transmission line at the Minneapolis-Wisconsin state border, which was an exclusive gateway into Wisconsin.

Absent the merger, Northern had the incentive to keep the transmission line open and sell its cheaper power in

Wisconsin, where it would compete with Wisconsin Energy. With the merger, it would sell its cheap power elsewhere and use its control over transmission to maintain Wisconsin Energy's market power and ability to sell at high prices.

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***First Bank of Grants/Grants State Bank***  
(5/27/97)

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First Bank of Grants and Grants State Bank terminated their plans to merge after the Division expressed concerns about the transaction. The merger would have eliminated competition in Cibola County, New Mexico, for business banking services.

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***United States v. Martin Marietta Materials, Inc., CSR Limited, CSR America, Inc., and American Aggregates, Inc.***  
(5/27/97)

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The Division challenged the \$234.5 million acquisition of American Aggregates Corporation by Martin Marietta Materials, Inc. American Aggregates was a subsidiary of CSR America, a Georgia-based company owned by CSR Limited of Australia. The complaint alleged that the acquisition, as originally structured, would have allowed Martin Marietta to become the dominant supplier of aggregate in Marion County, Indiana, with the power to increase prices. Aggregate is used to manufacture asphalt concrete and ready-mix concrete, which are used to build roads and highways. The Indiana Department of Transportation, through its highway contracts, was the largest purchaser of aggregate in Marion County. A proposed final judgment, filed simultaneously with the complaint, required

Martin Marietta to divest American Aggregates' Harding Street Quarry in Indianapolis.

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***Lamar Advertising Co./Hedrick Outdoor, Inc.***  
(6/2/97)

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The Division announced that it would not oppose Lamar Advertising's acquisition of Hedrick Outdoor on condition that Lamar divest 170 billboards located in four metropolitan areas in Mississippi, Louisiana, and Florida. Without the divestitures, Lamar would have controlled more than 50 percent of the available billboards in each of the communities involved and would have had more than 70 percent of the billboards along the most heavily traveled highways in the area.

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***United States v. Long Island Jewish Medical Center and North Shore Health System, Inc.***  
(6/11/97)

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The Division sued to block the combination of two flagship hospitals on Long Island: North Shore Health System and Long Island Jewish Medical Center (LIJMC). The complaint alleged that North Shore's flagship hospital, North Shore Manhasset, and LIJMC were each other's principal competitor by virtue of their premier reputations, comparable full range of services, and strategic location. They competed head-to-head to be the "flagship" or "anchor" hospital in the networks of hospitals assembled by managed care plans on Long Island to be able to offer a choice of health care options to area employers, families, and individuals throughout Nassau and Queens Counties. The Division contended that if the proposed transaction were permitted to go

through, North Shore and LIJMC would cease to compete for the business of managed care plans, and managed care plans would have only a single entity to negotiate with, eliminating the bargaining that has benefitted consumers of health care services. The district court denied the government's request for a permanent injunction and entered judgment in favor of the defendants (983 F. Supp. 121 (E.D.N.Y. 1997)).

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***AlliedSignal Truck Brake Systems Co./Midland Brake, Inc.***  
(6/13/97)

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AlliedSignal Truck Brake Systems Co., a subsidiary of AlliedSignal, abandoned its proposed acquisition of the assets of Midland Brake, Inc., a subsidiary of Echlin, Inc., after the Division expressed concerns that the deal, as originally structured, would have eliminated competition in brake components for trucks, trailers, and other types of vehicles, possibly resulting in higher prices for consumers.

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***United States v. Mahle GmbH, Mahle, Inc., Mabeg E.V. Metal Leve, S.A., and Metal Leve, Inc.***  
(6/19/97)

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The Division filed a complaint against Mahle GmbH, a German piston manufacturer, and Metal Leve, S.A., a Brazilian competitor, that alleged a violation of the premerger notification and waiting period requirements of the Hart-Scott-Rodino Act and sought a civil penalty of \$5.6 million. The complaint charged the parties with failing to notify federal officials of Mahle's proposed acquisition of a controlling interest in Metal Leve. Mahle acquired 50.1 percent of the voting securities of

Metal Leve for about \$40 million on June 26, 1996, without notifying the Federal Trade Commission and the Department of Justice. The parties were in violation of the Act from June 26, 1996 through at least March 20, 1997. Defendant Mahle GmbH and Metal Leve each agreed to pay a penalty of \$2,801,000 for a total of \$5,602,000. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The consent decree was entered by the Court on June 24, 1997. The civil penalty was paid on July 23, 1997.

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***Waste Management of Ohio/USA Waste Services, Inc.***  
(6/30/97)

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USA Waste Services abandoned its efforts to acquire the WMX operations of Waste Management of Ohio after the Division expressed concerns about the decrease in competition in the solid waste hauling business in the Allentown, Pennsylvania market.

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***GKN, plc/Weasler Holdings, Inc.***  
(6/30/97)

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GKN, plc abandoned its plan to acquire the \$48 million Weasler Holdings Inc, whose only asset was 100 percent of the stock of Weasler Engineering, Inc., from Code, Hennessy & Simmons after the Division expressed its concerns that the transaction would likely raise prices for consumers of the driveline systems for agricultural implements. Weasler manufactured driveline systems (also referred to as power takeoff driveshafts) and related components for agricultural implements. GKN and its subsidiaries, operating under the name of Walterscheid, was one of the world's leading manufacturers of driv-

eline systems for a broad range of vehicles. GKN manufactured agricultural driveline systems that competed in the North American market with Weasler. Weasler was the North American market leader in the highly engineered agricultural driveline market while GKN had the second largest market share.

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***United States v. Raytheon Company and Texas Instruments***  
(7/2/97)

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The Division challenged the proposed \$2.9 billion acquisition of Texas Instruments' Defense System and Electronics Unit by Raytheon Company. The acquisition, as originally structured, would have resulted in higher prices paid by the Department of Defense—and ultimately by the taxpayers—for advanced military radars used in major weapons systems. The Division simultaneously filed a proposed final judgment requiring Raytheon to sell Texas Instruments' monolithic microwave integrated chips (MMICs) business, which produced a key component for radar systems, in order for the deal to go forward. MMICs extend the power and range of radars, enabling them to scan airspace quickly and efficiently, with a lower probability of detection by enemies. The complaint alleged that Raytheon and Texas Instruments competed aggressively to develop leading edge high power amplifiers and that their research and development efforts had positioned them as the only firms able to supply competitive MMICs for future Defense Department radar programs. The required divestiture, at that time the largest since the post Cold War effort to consolidate the defense industry

began, ensured that there would be a viable competitor to Raytheon in a position to provide the MMICs necessary for the next generation of Defense Department radar systems.

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***British Telecom/MCI Communications Corp.***  
(7/7/97)

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The Division moved, in the U.S. District Court for the District of Columbia, to modify and extend the 1994 settlement involving British Telecom and MCI to ensure that British Telecom's then-proposed acquisition to obtain 100 percent of MCI would not disadvantage competitors and raise prices for consumers. The 1994 consent decree had settled Division allegations that British Telecom's acquisition of an initial 20 percent interest in MCI would have violated the antitrust laws. The original 1994 settlement contained provisions designed to prevent British Telecom from using its market power in the United Kingdom to discriminate in favor of MCI or in favor of a British Telecom/MCI joint venture at the expense of others competing in the market for international telecommunications services between the United States and the United Kingdom and around the world. The proposed modified final judgment retained and, in some cases, strengthened those protections to take into account the full integration of British Telecom and MCI, as well as changed market conditions. Specifically, it required the newly formed company to increase the amount of information reported to the Division to facilitate the detection of specific instances of discrimination, and to enable the Division to monitor whether BT is engaged in





discrimination. MCI was ultimately acquired by WorldCom, Inc., not British Telecom, and British Telecom sold its 20 percent interest.

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***Jacor Communications/Village Communications***  
(7/11/97)

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The Division did not oppose Jacor Communications' acquisition of radio stations from Village Communications in the Lexington-Fayette, Kentucky, market after Jacor agreed to divest its WXZZ-FM station to Regent Communications. The deal, as originally structured, would have resulted in the merged entity controlling 52 percent of the radio advertising market.

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***United States and State of Texas v. Allied Waste Industries, Inc. and USA Waste Services***  
(7/14/97)

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The Division challenged a proposed Texas landfill acquisition involving Allied Waste and USA Waste Services, two of the largest waste hauling and disposal companies in North America.

The complaint alleged that the acquisition would have lessened competition substantially in the Tarrant County area of Texas (where Fort Worth is located) by concentrating the landfill capacity in that area into the hands of only three companies, resulting in higher prices for waste disposal and hauling. A proposed final judgment, filed simultaneously with the complaint, required the divestiture of more than 1.4 million cubic yards of

landfill space over a five- to ten-year period at the two landfills in the Tarrant County area Allied would own after the acquisition. Additional divestiture of landfill space would be required if Allied expanded its capacity at USA Waste's Crow Landfill or developed a new landfill nearby. In addition, the decree required the acceptance of waste at Allied's two Tarrant County area landfills from haulers not affiliated with Allied on nonprice terms and conditions identical to those provided Allied.

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***Outdoor Systems, Inc./3M***  
(8/15/97)

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The Division did not oppose Outdoor Systems' acquisition of 3M's subsidiary, National Advertising Company, after Outdoor Systems agreed to sell billboards in 10 metropolitan areas. Without the divestiture, the transaction would have given Outdoor Systems market shares above 50 percent in many markets and limited advertisers to only one remaining billboard provider as an alternative to the merged company.

***United States and Commonwealth of Pennsylvania v. USA Waste Services, Inc., United Waste Systems, Inc., and Riviera Acquisition Corp. (8/22/97)***

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The Division challenged the acquisition of United Waste Systems by USA Waste Services, two of the nation's largest waste hauling companies. The complaint alleged that the acquisition would lessen competition substantially for municipal solid waste disposal and hauling services in Allegheny County, Pennsylvania, by giving USA Waste control over about 60 percent of the disposal services offered to haulers of municipal solid waste generated there. This would have resulted in higher prices for municipal solid waste disposal and hauling services in that area. Municipal solid waste includes residential and commercial trash and garbage. A proposed final judgment, filed simultaneously with the complaint, required the divestiture of a Pittsburgh-area landfill owned by a subsidiary of United Waste.

***Tyco International Ltd./Keystone International (8/22/97)***

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The Division did not oppose Tyco International's acquisition of Keystone International after Keystone agreed to sell its waterworks butterfly valve assets and business to a third party. Butterfly valves are used in waterworks applications, such as waste-water treatment. Without the spin-off, the transaction would have significantly increased concentration among producers of these valves and would have left only two providers of such valves in sizes below 24 inches. The divestiture was designed



to ensure that municipalities, the largest consumers of butterfly valves for waterworks, would continue to have viable choices for this essential waterworks construction component.

***United States v. Mid-America Dairy-men, Inc., Southern Foods Group LP and Milk Products LLC (9/3/97)***

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The Division challenged the acquisition of Borden/Meadows Gold Dairies Holdings, Inc. by Mid-America Dairy-men, the largest dairy cooperative in the United States. The complaint alleged that the acquisition would have lessened competition substantially for the sale of milk to public schools throughout eastern Texas and Louisiana. Throughout much of Texas and Louisiana, Southern Foods Group LP, in which

Mid-America had a partial ownership interest, and Borden were the only two bidders for school milk contracts. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required divestiture of nine plants: five in Texas, three in Louisiana, and one in New Mexico. A newly formed firm, Milk Products LLC, would be allowed to buy the divested dairies under certain conditions set out in the decree. The transaction, as originally proposed, would have had Mid-America finance most of the purchase price to be paid by Milk Products, but the complaint alleged that this would have left Mid-America with the ability to influence the operations of Milk Products. The decree placed limits on the terms and duration of Mid-America loans to Milk Products and placed strict limits on Mid-America's access to information about Milk Products.

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***United States v. Raytheon Company, General Motors Corp., and HE Holdings, Inc.***  
(10/16/97)

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The Division challenged Raytheon's \$5.1 billion acquisition of General Motors' Hughes Aircraft subsidiary. The complaint alleged that the acquisition would have lessened competition substantially in infrared sensors used in both ground and aviation weapons systems, and in electro-optical systems for ground vehicles. A proposed final judgment, filed simultaneously with the complaint, required divestiture of two defense electronics businesses in order to preserve competition in sophisticated technology for U.S. weapons systems. The divestiture was, at the time, the largest divestiture since the end of the Cold War.

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***Wachovia Corp./Central Fidelity Banks, Inc.***  
(10/17/97)

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The Division did not oppose Wachovia Corporation's and Central Fidelity Banks' merger after Wachovia agreed to divest nine branches, with total deposits of about \$218 million, in order to resolve the Division's concerns that the merger would lessen competition for banking services in certain areas of Virginia. The agreement resulted from a joint investigation conducted by the Division and the Office of the Virginia Attorney General.

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***Connoisseur Communications/ Lincoln Group L.P.***  
(10/23/97)

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The Division did not oppose Connoisseur Communications' \$13.5 million acquisition of two Youngstown, Ohio, radio stations from the Lincoln Group after Connoisseur sold two other Youngstown area radio stations. Connoisseur sold the stations after the Division and the Ohio Attorney General expressed concerns that the acquisition of Lincoln's stations would lessen competition in the Youngstown radio advertising market. Without the divestiture, Connoisseur's acquisition of stations from Lincoln would have given Connoisseur 55 percent of the radio advertising revenues in Youngstown.

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***United States v. Chancellor Media Corp. and SFX Broadcasting, Inc.***  
(11/6/97)

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The Division challenged Chancellor's acquisition of four Long Island, New York, radio stations, alleging that the acquisition would result in local busi-

nesses' owned by SFX Broadcasting paying higher radio advertising prices. Chancellor and SFX were the two largest radio groups on Long Island, and the merger would have created a dominant Long Island radio group with more than 65 percent of the market. The suit, which was the first contested court challenge to a radio station merger since passage of the Telecommunications Act of 1996, was resolved when Chancellor agreed to enter into a final judgment requiring it to abandon its plan to acquire SFX's Long Island stations. The judgment also required Chancellor and SFX to terminate a local marketing agreement under which Chancellor had been operating SFX's Long Island radio stations in anticipation of the acquisition.

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***American Information Systems/  
Business Records Corp.***  
(11/19/97)

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The Division did not oppose the merger between American Information Systems and Business Records Corp., two voting machine manufacturers, after Business Records agreed to sell its optical scan vote tabulation business to a third party. The deal, as originally structured, raised significant antitrust concerns that consumers of the optical scan vote tabulation equipment (state and local governments that run elections) would likely suffer anticompetitive price increases and decreased services. American Information Systems and Business Records were two of only three manufacturers of optical scan vote tabulation equipment in the U.S. Attorneys General from eight states participated in the investigation.

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***NationsBank Corp./Barnett Banks***  
(12/9/97)

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The Division did not oppose the proposed merger of NationsBank with Barnett Banks after NationsBank divested approximately 124 branch offices, with total assets of approximately \$4.1 billion, in 15 areas of Florida. At the time, this divestiture was the largest bank divestiture in a single state and the second largest bank divestiture. The Division's investigation was conducted jointly with the Florida Attorney General's Office.

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***United States v. Aluminum Company of America and Reynolds Metals Company***  
(12/29/97)

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The Division challenged Alcoa's acquisition of Reynolds' aluminum rolling mill and other related assets in Muscle Shoals, Alabama. As part of the acquisition, Alcoa planned to close the Reynolds facility. The complaint alleged that the acquisition would have resulted in higher prices for aluminum used to produce cans and higher prices to consumers who purchase canned beverages. Alcoa and Reynolds were, respectively, the largest and third largest makers of aluminum can stock in the United States. The two firms together had more than 60 percent of U.S. aluminum can stock capacity in a business that had only two other major players. On December 30, 1997, Alcoa abandoned the transaction.

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***General Electric Corp./Stewart & Stevenson Services, Inc.***  
(12/30/97)

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The Division did not oppose General Electric's proposed \$600 million

purchase of Stewart & Stevenson Services' Gas Turbine Division after GE agreed to license a newly formed joint venture, TransCanada Turbines, to perform maintenance and overhauls of certain GE-manufactured marine and industrial equipment. Stewart & Stevenson was GE's largest competitor worldwide in the provision of maintenance and overhaul services and was the only North American company licensed to service certain GE engines.

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***Perkin-Elmer Corp./PerSeptive BioSystems, Inc.***  
(1/15/98)

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The Division did not oppose Perkin-Elmer's \$360 million purchase of PerSeptive BioSystems after Perkin-Elmer agreed to sell the entire bundle of PerSeptive's DNA synthesis patent rights to NeXstar Pharmaceuticals, Inc. The divestiture, which would enable NeXstar to make the instruments and chemicals used in the synthesis of DNA molecules, resolved concerns that the acquisition would stifle competition for these products. Perkin-Elmer and PerSeptive were the only two companies that held patents necessary for production of certain DNA molecules, which are used in the research and development of certain medical treatments.

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***Capstar Broadcasting Partners/Patterson Broadcasting***  
(1/29/98)

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The Division did not oppose Capstar's acquisition of Patterson Broadcasting after Capstar agreed to sell the two Allentown, Pennsylvania, radio stations acquired in the transaction. The transaction, as originally structured, would have increased concentration and

lessened competition for radio advertising in Allentown, Pennsylvania.

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***KPMG Peat Marwick/Ernst & Young***  
(2/13/98)

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KPMG Peat Marwick and Ernst & Young, two of the big six accounting firms, abandoned their plans to merge after the Division expressed concerns that the merger would have adversely affected competition by reducing the already limited number of firms providing auditing services to Fortune 1000 companies.

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***United States v. Pacific Enterprises and Enova Corp.***  
(3/3/98)

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The Division challenged the proposed \$6 billion merger of Pacific Enterprises, a California natural gas utility, and Enova Corporation, a California electric utility company. This was the Division's first challenge to a merger between a gas and electric utility. The complaint alleged that, as a result of the merger of Pacific's natural gas pipeline with Enova's electric power business, the combined company would have had both the incentive and the ability to lessen competition in the market for electricity in California and that the merger likely would have resulted in consumers in California paying higher prices for electricity. The complaint further stated that, in early 1998, the California electric market experienced significant changes as a result of legislatively mandated restructuring. In this new competitive electric market, gas-fired plants, which were the most costly generating plants to operate, set the price that all sellers received for electricity in California in peak demand peri-

ods. Thus, if a firm could increase the cost of gas-fired plants by raising fuel prices, it could raise the price charged by all sellers of electricity and increase the profits of owners of lower cost sources of electricity. In this way, the acquisition of Enova's low-cost electric generating plants gave Pacific a means to benefit from any increase in electric prices. A proposed final judgment, filed simultaneously with the complaint, required Enova to sell its two largest low-cost electric power plants in order to complete its merger with Pacific.

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***Haynes Holdings, Inc./Inco Alloys International***  
(3/3/98)

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The Division announced that Blackstone Capital Partners II Merchant Banking Fund, L.P. and Haynes Holdings abandoned their attempt to purchase Inco Alloys International, the alloys division of Inco Limited, after the Division announced its intention to challenge the proposed acquisition. The Division said that the acquisition would likely have resulted in higher prices to consumers purchasing certain high-performance nickel-based alloy products. High-performance nickel-based alloys are sold in various forms and designed to be used in high temperature and highly corrosive environments, such as in the aerospace, chemical processing, land-based gas turbine, and oil and gas industries.

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***Peoples Heritage Financial Group, Inc./CFX Corp.***  
(3/9/98)

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The Division did not oppose Peoples Heritage's purchase of CFX after the parties agreed to divest three branch

offices in New Hampshire. The agreement resolved Division concerns that the merger would lessen competition for business banking services in New Hampshire.

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***Reed Elsevier Business Information/Wolters Kluwer NV***  
(3/9/98)

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Reed Elsevier and Wolters Kluwer abandoned their \$7.8 billion merger, which would have combined Reed Elsevier, a worldwide publisher of scientific and business information, with Wolters, a leading publisher participating in such segments as business, medical, and legal publishing, after the Division and the European Union expressed concerns about the merger. The Division was concerned that the merger would have likely resulted in higher prices for consumers for certain publications, such as scientific, technical, and medical publications. The Division and the European Union conducted independent investigations of the proposed transactions, but there was significant cooperation between the agencies.

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***Andrew Taitz/Harley Davidson***  
(3/20/98)

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Union City Body Company abandoned plans to acquire the assets of Utilmaster, a division of Holiday Rambler, LLC (a subsidiary of Harley Davidson), after the Division expressed concerns that the deal would likely result in higher prices for consumers. Union City and Utilmaster were direct competitors in the market for walk-in van assembly and had combined sales of about 67 percent of the walk-in van market. There was only one other competitor.

***United States v. Lockheed Martin Corp. and Northrop Grumman Corp.***  
(3/23/98)

The Division challenged the proposed acquisition of Northrop Grumman by Lockheed Martin, an \$11.6 billion merger that was the single largest ever challenged by a federal antitrust agency. The complaint alleged that the merger would have resulted in unprecedented vertical and horizontal concentration in the defense industry, which would substantially lessened, and in several cases eliminated, competition in major product markets critical to the national defense. The merger would have resulted in Lockheed Martin's obtaining a monopoly position in airborne early warning radar, electro-optical missile warning systems, directed infrared countermeasures systems, the SQQ-89 antisubmarine warfare combat system, and fiber-optic towed decoys, which would likely have led to higher costs, higher prices, and less innovation for systems required by the U.S. military. In addition, the merger would have reduced competition in the sale of advanced tactical and strategic aircraft, airborne early warning radar systems, sonar systems, and several types of countermeasure systems that are designed to alert aircraft pilots to threats and to help them respond to those threats. On July 16, 1998, the parties abandoned the transaction.

***United States v. Lehman Brothers Holdings, Inc. and L-3 Communications Holdings, Inc.***  
(3/27/98)

The Division challenged L-3 Communications' (L-3) proposed acquisition



of Allied Signal's Ocean Systems Business and Allied Signal ELAC Nautik GmbH (Ocean Systems) and simultaneously filed a proposed final judgment requiring L-3 to put into place procedures to ensure Ocean Systems' independence as a competitor for a future submarine detector known as a towed sonar array. Ocean Systems and Lockheed Martin Corporation (Lockheed Martin) were the leading providers of submarine detectors used on U.S. Navy surface combat vessels and submarines. Lockheed Martin owned 34 percent of the common stock of L-3 and controlled three of 10 seats on L-3's Board of Directors. The complaint alleged that the proposed acquisition would have lessened competition substantially because there was a strong likelihood that competitively sensitive information concerning L-3's design, production, and bid plans for towed arrays would be shared with Lockheed Martin.

***United States v. Loewen Group, Inc. and Loewen Group International, Inc.***  
(3/31/98)

The Division filed a complaint against Loewen Group and Loewen

Group International alleging a violation of the premerger reporting requirements of the Hart-Scott-Rodino Act. The violation was a result of Loewen Group's \$16 million acquisition of the voting securities of Prime Succession Inc., an Indiana-based owner and operator of funeral homes and cemeteries, before notifying the nation's two federal antitrust agencies. A proposed final judgment, filed simultaneously with the complaint, settled the suit, and on May 14, 1998, the defendants paid a civil penalty totaling \$500,000. The final judgment was entered by the Court on April 15, 1998.

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***United States v. CBS Corp. and American Radio Systems Corp.***  
(3/31/98)

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The Division challenged the \$1.6 billion acquisition of American Radio Systems by CBS. The complaint alleged that the acquisition would likely have resulted in higher radio advertising prices in Boston, Massachusetts; St. Louis, Missouri; and Baltimore, Maryland. The acquisition would have resulted in CBS having 59 percent of Boston's radio advertising revenues, 49 percent in St. Louis, and 46 percent in Baltimore. A proposed final judgment, filed simultaneously with the complaint, required CBS to divest seven radio stations: four in Boston (WEEL-AM, WAAF-FM, WEGQ-FM, and WRKO-AM), two in St. Louis (KSD-FM and KLOU-FM), and one in Baltimore (WOCT-FM). The divestiture reduced CBS's share of radio advertising revenues in each of the three cities to less than 40 percent.

***United States v. Hicks, Muse, Tate & Furst, Inc., Capstar Broadcasting Partners, Inc., and SFX Broadcasting, Inc.***  
(3/31/98)

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The Division challenged the \$2.1 billion acquisition of SFX Broadcasting by Capstar Broadcasting Partners, Inc. The complaint alleged that the acquisition would likely have resulted in higher radio advertising prices in Greenville, South Carolina; Houston, Texas; Pittsburgh, Pennsylvania; Jackson, Mississippi; and Suffolk County, New York. The acquisition would have resulted in Capstar and its related entities (Hicks, Muse, Tate & Furst Inc. and Chancellor Media Corporation) having 74 percent of radio advertising revenues in Greenville, 43 percent in Houston, 44 percent in Pittsburgh, 57 percent in Jackson, and 65 percent in Suffolk County, New York. A proposed final judgment, filed simultaneously with the complaint, required Capstar to divest 11 radio stations: four in Greenville (WESC-FM and AM, WJMZ-FM, and WTPT-FM), one in Houston (KKPN-FM), one in Pittsburgh (WTAE-AM), one in Jackson (WJDX-FM), and four SFX stations in Long Island, New York (WBLI-FM, WBAB-FM, WHFM-FM, and WGBB-AM).

***Clear Channel Communications, Inc./Universal Outdoor Holdings, Inc.***  
(4/1/98)

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The Division did not oppose Clear Channel Communications' \$1.1 billion acquisition of Universal Outdoor Holdings after Clear Channel agreed to resolve the Division's competitive concerns by selling billboard assets in three markets: Milwaukee, Wisconsin;



Orlando, Florida; and Pinellas County, Florida. The deal, as originally structured, would have reduced competition in billboard advertising in these three markets. The transaction would have left Milwaukee with only one significant billboard provider, and in the two Florida markets, consumers would have lost a significant competitor.

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***Sungard Data Systems, Inc./Rolfe & Nolan, plc***  
(4/3/98)

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Sungard abandoned its \$120 million plan to purchase Rolfe & Nolan after the Division expressed concerns about the transaction. Sungard and Rolfe were the only two providers of clearing and settlement software for use by banks, trading firms, and exchanges. The merger would have given the combined firm a monopoly in the clearing and settlement software market.

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***First Union Corp./CoreStates Financial Corp.***  
(4/10/98)

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The Division did not oppose the \$16.6 billion merger of First Union with CoreStates Financial after an agreement was reached to divest 32 branch offices in Pennsylvania. The divestitures ensured that consumers would continue to receive the most competitive loan rates and the best banking services in those markets. The 32 CoreState branches required to be divested were located in Philadelphia, Delaware, and Montgomery Counties and Lehigh Valley, and had total deposits of approximately \$1.1 billion. The Division's investigation was conducted jointly with the Pennsylvania Attorney General's Office.

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***United States, State of New York, and State of Illinois v. Sony Corp. of America, LTM Holdings Inc. d/b/a Loews Theatres Cineplex Odeon Corp., and J.E. Seagram***  
(4/16/98)

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The Division challenged the proposed merger between Loews Theatres, a subsidiary of Sony Corp., and Cineplex Odeon Corp. The complaint alleged that the merger of these two movie theater chains would lessen competition substantially in the Manhattan and metro-Chicago markets, leading to higher ticket prices and reduced theater quality for first-run movies. The merged firm would have had market shares, by revenues, of 67 percent in Manhattan and 77 percent in Chicago. A proposed consent decree, filed simultaneously with the complaint, required the divestiture of 14 theaters in Manhattan and 11 theaters in Chicago. In both Manhattan and Chicago, the divestitures represented slightly more than the leading firm would have acquired in terms of both number of screens and revenues.

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***Banc One Corp./First Commerce Corp.***  
(5/4/98)

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The Division did not oppose Banc One's \$3.1 billion merger with First Commerce after the banks agreed to resolve the Division's antitrust concerns by selling off 25 branch offices in Louisiana. The Division stated that, with the divestiture of those branches, with total deposits of \$614 million, small and medium-sized business consumers would continue to receive competitive loan rates and banking services.

***United States v. Primestar, Inc., Tele-Communications, Inc., TCI Satellite Entertainment, Inc., Time Warner Entertainment Company, L.P., MediaOne Group, Comcast Corp., Cox Communications, Inc., GE American Communications, Inc., Newhouse Broadcasting Corp., The News Corp. Limited, MCI Communications Corp., and Keith Rupert Murdoch***  
(5/12/98)

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The Division challenged Primestar's acquisition of the direct broadcast satellite (DBS) assets of News Corp. Limited and MCI, alleging that it would allow five of the largest cable companies in the United States, which controlled Primestar, to protect their monopolies and keep out new competitors. The complaint alleged that the proposed \$1.1 billion acquisition would lessen competition substantially and enhance monopoly power in multichannel video programming distribution, which includes cable, DBS, and a few other types of video programming distribution, denying consumers the benefits of competition, including lower prices, higher quality, greater choice, and increased innovation. The proposed transaction called for News Corp./MCI to transfer authorization to operate 28 satellite transponders at the 110 west longitude orbital slot and two high-power DBS satellites under construction to Primestar. The 110 slot was one of three that could be used to provide high-power DBS service, which customers could receive using dishes as small as 18 inches in diameter, to the entire continental United States, and was the last position available for use or expansion by independent DBS firms. The complaint alleged that the transaction would prevent an independent firm from using the assets to compete directly and vigorously with the Primestar owners'

cable systems and would eliminate the cable companies' most significant potential competitor, News Corp.'s ASkyB satellite venture. On October 14, 1998, Primestar abandoned its acquisition of News Corp.'s and MCI's DBS assets.

***Star Bank, N.A./Bank One, N.A./Bank One Wheeling-Steubenville***  
(5/15/98)

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The Division did not oppose Star Bank N.A.'s acquisition of 53 Ohio branches of Bank One subsidiaries in Ohio (48 branches of Bank One, N.A., Columbus, Ohio, and five Ohio branches of Bank One Wheeling-Steubenville, N.A., Wheeling, West Virginia) after the parties agreed to restructure the proposed acquisition to alleviate Division concerns regarding Star Bank's acquisition of four branches in Scioto County: Portsmouth, Portsmouth Auto-Bank, Wheelersburg, and Lucasville. Star Bank agreed to amend its application to exclude these four branches, thereby preserving competition for retail and small business lending in these markets.

***Sinclair Broadcast Group, Inc./Heritage Media Corp. and Phase II Broadcasting***  
(5/28/98)

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The Division did not oppose Sinclair's acquisition of five radio stations in New Orleans from Heritage Media and Phase II after Sinclair agreed to sell three stations to Centennial Broadcasting LLC. The acquisition of the five stations would have given Sinclair control of nine radio stations in New Orleans, accounting for about 55 percent of the radio advertising revenues.

**Capstar Acquisition Company Inc./  
KRNA, Inc.**  
(6/8/98)

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The Division did not oppose Capstar's acquisition of a Cedar Rapids, Iowa radio station from KRNA, Inc. after Capstar terminated a contract to acquire an additional Cedar Rapids area radio station from KRNA. Had Capstar acquired both radio stations, it would have had five of the 12 radio stations in the Cedar Rapids radio market and approximately 49 percent of the radio advertising revenues in that market.

**Bangor Savings Bank/Fleet Bank of  
Maine**  
(6/10/98)

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The Division did not oppose Bangor's acquisition of several branches from Fleet Bank of Maine after Bangor Savings Bank amended the transaction to remove three branches, with total deposits of \$36 million, located within the Guilford market. The transaction, as originally structured, would have had a significantly adverse effect on competition in the market for business banking services in Guilford, Maine.

**Thermo Environmental Instruments,  
Inc./Smiths Industries, plc**  
(6/11/98)

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The Division did not oppose Thermo Environmental's acquisition of Smiths Industries, plc's Graseby, plc product-monitoring and environmental-monitoring groups after the acquisition was restructured. Under the restructured merger, Thermo Environmental agreed not to acquire Graseby Specac Limited, which manufactured accessories essential to test various substances in a spectrom-

eter. A spectrometer is a device that determines the chemical composition of substances. Graseby Specac remained part of Smiths Industries, plc. Graseby Specac and Thermo Environmental's SpectraTech were the only full-line manufacturers of sample holding accessories for use with spectrometers. Thus the transaction, as originally structured, would have combined the number one and the number two worldwide manufacturers of spectrometer accessories respectively. The restructured deal would maintain competition and would provide low prices and effective services for these accessories, helping to ensure the purity and quality of many goods.

**United States v. Aluminum Com-  
pany of America and Alumas, Inc.**  
(6/15/98)

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The Division challenged the proposed \$3.8 billion acquisition of Alumas by Alcoa. The complaint alleged that the acquisition likely would have resulted in higher prices for customers of aluminum cast plate. Alcoa and Alumas were the two largest producers of aluminum cast plate and together controlled approximately 90 percent of the worldwide market for cast plate. Cast plate is a flat aluminum product that resists warping and is used in machinery that makes products for packaging frozen foods and aircraft and automotive parts. A proposed final judgment, filed simultaneously with the complaint, required Alcoa to sell its cast plate operations, including its Vernon, California, plant that makes cast plate, to a firm that would continue to manufacture and sell cast plate.

***National City Corp./First of America Bank Corp.***  
(6/30/98)

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The Division did not oppose the acquisition by National City Corporation of First of America Bank Corporation after First America agreed to divest two branch offices in the Anderson, Indiana, banking market (with total deposits of \$31.9 million). Without this divestiture, the acquisition would have likely resulted in higher loan prices for business banking services in the Anderson, Indiana, banking market.

***Capstar Broadcasting Partners/Paxson Communications***  
(6/30/98)

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Capstar Broadcasting Partners abandoned its acquisition of WYCL-FM from Paxson Communications in response to Division concerns that the acquisition would have resulted in increased radio advertising prices for consumers in the Pensacola, Florida, radio market. At the time of the proposed acquisition, Capstar operated two stations in the Pensacola, Florida market: WMEZ-FM and WXBM-FM.

***American Airlines/Aerolineas Argentinas***  
(7/8/98)

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The Division did not oppose American Airlines' proposed acquisition of about 8.5 percent of Aerolineas Argentinas, Argentina's major airline, after American agreed to restructure the acquisition. American and Aerolineas, along with United Airlines, were the only carriers serving the United States-Argentina market, including the New



York-Buenos Aires and Miami-Buenos Aires routes. Entry and expansion on these routes was limited by a restrictive bilateral aviation treaty between Argentina and the United States. Under the restructured transaction, American would have no representatives on the Aerolineas Board of Directors and would relinquish its right to vote its shares to influence competitive decisions by Aerolineas.

***United States v. General Electric Company and InnoServ Technologies, Inc.***  
(7/14/98)

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The Division challenged the acquisition of InnoServ by General Electric Company (GE). The complaint alleged that the acquisition would lessen competition substantially in the markets for servicing certain models of GE medical imaging equipment and in local areas throughout the United States for multivendor service, in which some hospitals contract with a single provider to service most or all of a hospital's equipment. GE was the world's largest manufacturer of medical imaging equipment and a leading provider of service for all types and brands of medical equipment, and InnoServ's PREVU

software was one of a very few programs available to service some models of imaging equipment. A proposed final judgment, filed simultaneously with the complaint, required GE to sell InnoServ's PREVU software to a third party.

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***WorldCom, Inc./MCI Communications Corp.***  
(7/15/98)

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The Division did not oppose WorldCom's \$44 billion purchase of MCI after MCI agreed to divest its Internet business. MCI agreed to sell internetMCI to Cable & Wireless, plc for an estimated \$1.75 billion, making it the largest divestiture of a company at that date in merger history. Without that divestiture, the WorldCom/MCI merger would have combined the two leading providers of nationwide Internet backbone service, a service that connects various high-capacity computer networks carrying Internet traffic. The merger, as originally proposed, would have given WorldCom/MCI a significant proportion of the nation's Internet traffic, giving the company the ability to cut off or reduce the quality of Internet services that it provided to its rivals, and harming customers using the services of those rivals. Customers of backbone services include Internet service providers and private and public institutions and corporations. The Division and the European Union conducted independent investigations of the proposed transactions, but there was a high degree of cooperation between the agencies. Attorneys General from ten states also participated in the investigation.

***United States and States of Ohio, Arizona, California, Colorado, Florida, Commonwealth of Kentucky, States of Maryland, Michigan, New York, Commonwealth of Pennsylvania, States of Texas, Washington, and Wisconsin v. USA Waste Services, Inc., Dome Merger Subsidiary, and Waste Management, Inc.***  
(7/16/98)

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The Division and 13 states challenged the \$13.5 billion acquisition of Waste Management, Inc. (WMI) by USA Waste Services, Inc. (USA Waste). WMI and USA Waste were two of the nation's largest waste collection and disposal companies. The complaint alleged that the acquisition would lessen competition substantially for waste collection and disposal services in 21 geographic areas across the United States. A proposed final judgment, filed simultaneously with the complaint, required USA Waste to divest waste collection and/or disposal operations in 13 states, covering 21 metropolitan areas: Tucson, Arizona; Los Angeles, California; Denver, Colorado; Gainesville and Miami, Florida; Louisville, Kentucky; Baltimore, Maryland; Detroit, Flint, and Northeast, Michigan; New York, New York; Akron, Cleveland, Canton and Columbus, Ohio; Portland, Oregon; Allentown, Philadelphia, and Pittsburgh, Pennsylvania; Houston, Texas; and Milwaukee, Wisconsin.

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***Specialty Teleconstructors, Inc./Stainless, Inc.***  
(7/17/98)

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Specialty Teleconstructors abandoned its proposed acquisition of 100 percent of the stock of Stainless and certain related assets of Stainless Enterprises of Pennsylvania, Inc., through its 33 percent ownership of Kline Iron &

Steel Company, after the Division expressed concerns about the anticompetitive effects of the transaction in the market for the construction of towers for television broadcasting, which require tremendous expertise. Stainless was a key competitor of Kline in the highly concentrated market of tall television broadcast tower construction.

***United States v. Citicorp, Inc., Citicorp Services, Inc., GTECH Holdings Corp., and Transactive Corp.***  
(7/27/98)

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The Division challenged the acquisition of the electronic benefit transfer (EBT) system business of Transactive Corporation (Transactive), a subsidiary of GTECH Holdings Corporation, by Citicorp Services, Inc. (Citicorp), a subsidiary of Citicorp, Inc. The complaint alleged that the acquisition would lessen competition substantially in the provision of EBT services to state and local governments. EBT services are used by state and local agencies to provide food stamps and cash benefits to Americans who qualify for welfare payments. Federal law requires all states to use EBT systems to deliver food stamp benefits by the year 2002. In the challenged transaction, Citicorp would have acquired from Transactive the contracts to deliver EBT services to the states of Texas, Illinois, and Indiana and Sacramento County in California, as well as certain computer hardware and software used to provide processing services in these states. In addition to the acquisition of these contracts, there was also a noncompete provision in the agreement that would have prevented Transactive from competing with Citicorp for new EBT contracts or from licensing its processing system to an-

other vendor for use in delivering EBT systems. The complaint alleged that the acquisition would have eliminated competition for EBT contracts, resulting in higher prices and lower quality services for state and local agencies and lower quality services for recipients of welfare benefits. On January 29, 1999, the parties abandoned the transaction.

***Capstar Broadcasting Partners/Big Chief Broadcasting Company***  
(7/27/98)

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As a result of Division concerns, Capstar Broadcasting abandoned its proposed acquisition of KTCS-FM and KTCS-AM radio stations from Big Chief Broadcasting Company. If the transaction had been consummated as planned, Capstar would have controlled approximately 62 percent of the Ft. Smith, Arkansas, radio market and would have owned four of the 12 Class stations licensed in the market.

***Cape Fear Broadcasting/Sea Communications***  
(8/10/98)

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Cape Fear Broadcasting and Sea Communications abandoned their proposed merger plan after the Division expressed concerns that the merger would have anticompetitive effects in the Wilmington, North Carolina, market for radio advertising. Cape Fear Broadcasting, at the time of the proposed merger, owned WMNX-FM, WGNI-FM, and WSFM-FM, and those stations controlled about 39 percent of the advertising revenues in the market. Sea Communications owned WMNX-FM, which controlled about 27 percent of the advertising revenues. The combined entity would have controlled approxi-

mately 66 percent of the radio advertising revenues and controlled four of the nine Class stations licensed.

***Jacor Communications, Inc./Nationwide Communications, Inc.***  
(8/10/98)

The Division did not oppose Jacor Communications' \$620 million acquisition of Nationwide Communications after Jacor agreed to sell eight radio stations: two in San Diego, California; one in Cleveland, Ohio; and five in Columbus, Ohio. Without the divestitures, the acquisition would have significantly reduced competition in those cities. If the deal were approved as originally proposed, Jacor would have had control of 12 stations in San Diego, accounting for 42 percent of radio advertising revenues. In Cleveland, Jacor would have owned six radio stations with 43 percent of radio advertising revenues. In Columbus, with nine radio stations, Jacor would have had 58 percent of radio advertising revenues. The Division and the Ohio Attorney General's Office conducted a joint investigation.

***Dean Foods Company/Barber Dairies, Inc.***  
(8/11/98)

The Division did not oppose the acquisition of Barber Dairies, Inc. by Dean Foods Company after the parties agreed to sell a Barber Dairies plant in Huntsville, Alabama, to Southern Foods Group, L.P. The deal, as initially structured, could have lessened competition in bidding to supply milk to school districts in at least 18 counties in Alabama.

***NationsBank Corp./BankAmerica Corp.***  
(8/14/98)

The Division did not oppose NationsBank's proposed merger with BankAmerica after NationsBank agreed to sell off 17 branch offices with total deposits of approximately \$491.6 million located in New Mexico (15 branch offices in Albuquerque, one in Clovis, and one in McKinley) in order to resolve the Division's concerns that the merger would lessen competition for loans to small and medium-sized businesses. The Division's investigation was conducted jointly with the offices of the New Mexico and Texas Attorney General.

***Capstar Broadcasting Partners/KATQ Radio, Inc.***  
(9/2/98)

Capstar Broadcasting abandoned its acquisition of KATQ Radio after the Division expressed concerns that the acquisition would have reduced competition and increased prices in the Texarkana, Arkansas-Texas, radio advertising market. By purchasing KATQ Radio, Capstar would have acquired two radio stations that competed with Capstar stations in that market and would have had a 62 percent share of advertising revenues.

***Banc One Corp./First Chicago NBD Corp.***  
(9/8/98)

The Division did not oppose the \$29 billion merger of Banc One with First Chicago after the banks agreed to divest 39 branch offices in Indiana with total deposits of approximately \$1.47 billion. In addition, the banks offered to

sell certain middle-market commercial loan operations in Indiana and associated middle market commercial loans. The divestiture ensured that small and medium-sized business consumers would continue to have the benefits of competition. The Division's investigation was conducted jointly with the Indiana Attorney General's Office.

***West Virginia Radio Corp./Fantasia Broadcasting***  
(9/16/98)

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West Virginia Radio Corporation abandoned its proposed acquisition of one Morgantown, West Virginia, radio station, WFGM-FM, from Fantasia Broadcasting after the Division expressed concerns that the transaction would have resulted in higher prices for consumers in the Morgantown, West Virginia, radio advertising market.

***Meredith Corp./First Media Television, L.P.***  
(9/16/98)

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The Division did not oppose Meredith Corporation's acquisition of First Media Television after the parties agreed to restructure the transaction. The transaction, as originally structured, would have resulted in anticompetitive effects in the television advertising market in Orlando, Florida, by combining the parties' competing television stations. The parties agreed to restructure the transaction by divesting one of the Orlando area television stations.



***Talleyrand Broadcasting, Inc./Citadel Broadcasting Company***  
(9/24/98)

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Talleyrand Broadcasting abandoned its efforts to purchase radio stations from Citadel Broadcasting, after the Division expressed concerns that the acquisition likely would have resulted in a loss of competition in the State College, Pennsylvania, radio advertising market, where both companies owned radio stations. If the deal had gone forward, Talleyrand would have controlled approximately 46 percent of the radio advertising revenues in the State College market.

***United States v. Halliburton Company and Dresser Industries, Inc.***  
(9/29/98)

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The Division challenged the proposed merger of Halliburton and Dresser. The complaint alleged that the merger would result in increased prices and decreased quality for logging-while-



drilling (LWD) tools and services for oil and natural gas drilling projects, as well as decreased competition in the development and improvement of LWD tools. LWD services provide information to oil and gas companies about the formations through which the companies are drilling, whether there is oil in the formation, and the ease with which oil can be extracted. A proposed final judgment, filed simultaneously with the complaint, required Halliburton to divest its entire LWD business, including its manufacturing, research and development, and sales and service capabilities. Separately, Halliburton also agreed to sell its 36 percent interest in M-I Drilling to Smith International, Inc. Without that divestiture, Halliburton would have acquired one of its principal competitors, Dresser's Baroid Division. M-I and Baroid were the two largest drilling fluids competitors in a \$3 billion industry. Halliburton sold this interest on August 31, 1998. Drilling fluids, which are a combination of chemical compounds and minerals, are the second largest cost of drilling for oil and natural gas after rental of the rig. They are critical for cooling and lubricating the drill bit and controlling downhole pressure. The decree was entered by the Court on February 22, 1999.

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***Lamar Advertising Company/Outdoor Communications, Inc.***  
(10/2/98)

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The Division did not oppose Lamar Advertising's \$148.2 million acquisition of Outdoor Communications after the parties agreed to divest billboard assets in six counties in Alabama, Mississippi, and Tennessee. The deal, as originally structured, would have resulted in Lamar controlling approximately 50

percent or more of the available billboards in these markets. The divestitures ensured that competition would remain in the billboard market, protecting small business customers who rely on billboard advertising as a cost-effective way to promote their businesses.

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***U.S. Bancorp/Northwest Bancshares, Inc.***  
(10/9/98)

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The Division did not oppose the merger of U.S. Bancorp and Northwest Bancshares after U.S. Bancorp agreed to divest a bank branch in Clark County, Washington. The Division stated that the deal, as originally proposed, would have lessened competition for banking services in Clark County. The divestiture ensured that local customers would continue to have competitively priced banking services.

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***Norwest Corp./Wells Fargo & Company***  
(10/13/98)

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The Division did not oppose the \$34 billion merger of Norwest Corporation with Wells Fargo & Company after the banks agreed to sell 26 bank branch offices in Arizona and Nevada with deposits totaling approximately \$1.18 billion. The divestiture was designed to ensure that local customers, particularly small businesses, had access to competitively priced banking services.

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***United States v. Northwest Airlines Corp. and Continental Airlines, Inc.***  
(10/23/98)

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The Division filed suit to block Northwest Airlines from buying a controlling stake in Continental Airlines.

Northwest and Continental are the fourth and fifth largest U.S. airlines respectively and compete to provide air transportation services on thousands of routes across the country. The proposed acquisition would allow Northwest to acquire voting control over Continental, as well as to share in Continental's profits, diminishing substantially both Northwest's and Continental's incentives to compete against each other. The complaint alleged that Northwest and Continental are each other's most significant competitor—if not the only competitor—for nonstop airline service between the cities where they operate hubs. According to the complaint, Northwest plans to acquire stock representing 14 percent of Continental's equity but carrying 51 percent of its voting rights. Although a related agreement with Continental required Northwest to place its stock in a "voting trust" for six years, the complaint alleged that the voting trust would not prevent the competitive harm likely to result from the acquisition. Northwest has gone ahead with its acquisition, and litigation is pending in U.S. District Court in Detroit, Michigan. Trial is scheduled to commence September 19, 2000.

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***United States v. Chancellor Media Corp. and Kunz & Company***  
(11/12/98)

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The Division challenged Chancellor Media's \$39.5 million acquisition of Kunz & Company. Chancellor and Kunz were head-to-head competitors in the business of selling outdoor advertising, such as billboard space, to business customers. The complaint alleged that the acquisition would substantially

lessen competition for outdoor advertising in Kern, Kings, and Inyo Counties, California, and Mojave County, Arizona, giving Chancellor a virtual monopoly in some areas and more than 60 percent of the market in others. A proposed final judgment was filed simultaneously with the complaint that required Chancellor to divest outdoor advertising assets valued at more than \$5 million in those four counties.

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***United States and States of New York and Florida and Commonwealth of Pennsylvania v. Waste Management, Inc., Ocho Acquisition, Corp., and Eastern Environmental Services, Inc.***  
(11/17/98)

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The Division, joined by three states, sued to block the nation's largest waste collection and disposal firm, Waste Management, from acquiring a large regional rival, Eastern Environmental Services. The complaint alleged that the \$1.2 billion merger would reduce competition on a multibillion dollar contract to dispose of New York City's residential solid waste and would also reduce competition for other solid waste collection and disposal services in New York, Pennsylvania, and Florida. A proposed final judgment that would settle the suit was filed December 31, 1998. It required the companies to divest waste collection and/or disposal operations in nine markets in those three states. In addition, Eastern was required to sell its pending proposal to be awarded part of a \$6 billion contract to dispose of New York City's residential waste.

***United States v. Pearson, plc,  
Pearson, Inc., and Viacom Interna-  
tional, Inc.***  
(11/23/98)

The Division challenged Pearson's \$4.6 billion acquisition of educational, professional, and reference publishing businesses from Viacom. The complaint alleged that the acquisition would have lessened competition, and a proposed final judgment, filed simultaneously with the complaint, required Pearson to sell off an elementary school science textbook program and textbooks used in 32 college courses. Pearson and Viacom were two of only four publishers of major comprehensive elementary school science programs (which include textbooks and related materials and services) and two of only a few publishers of textbooks and educational materials for over 30 college courses.

***United States v. Chancellor Media Corp., Whiteco Industries, Inc., and Metro Management Associates***  
(11/25/98)

The Division challenged Chancellor Media's \$930 million acquisition of Whiteco Industries. Chancellor and Whiteco were head-to-head competitors in the business of selling outdoor advertising, such as billboard space. The complaint alleged that the acquisition would have reduced competition in seven counties located in Kansas, Pennsylvania, Connecticut, and Texas. The combined entity would have had a monopoly in Hartford County, Connecticut, and market shares ranging between 48 percent to 88 percent in the remaining markets. A proposed final judgment was filed that required divestiture of billboard assets in those seven counties.



***City Holding Company/Horizon Bancorp, Inc.***  
(11/30/98)

The Division did not oppose City Holding Company's acquisition of Horizon Bancorp after the parties agreed to divest two branch offices in West Virginia with deposits totaling approximately \$94.8 million. Without the divestitures, the deal would have reduced competition for consumers of business banking services in Greenbrier County and Hinton, West Virginia.

***Monsanto Company/DeKalb Genetics Corp.***  
(11/30/98)

The Division did not oppose Monsanto's \$2.3 billion acquisition of DeKalb Genetics after Monsanto agreed to modify the deal. The Division's concerns focused on maintaining compe-

tition in biotechnology developments in corn. Monsanto agreed to spin off its claims to a recently developed technology used to introduce new genetic traits into corn seed (agrobacterium-mediated transformation technology) to the University of California at Berkeley. Monsanto also entered into binding commitments to license its Holden's corn germplasm, the type of genetic material that is used by biotech companies to introduce new transgenic traits in corn to breed the hybrid seed that farmers plant. Transgenic corn is corn that has been genetically altered so that it has certain traits, such as insect resistance or herbicide tolerance.

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***United States v. AT&T Corp. and Tele-Communications, Inc.***  
(12/30/98)

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The Division challenged the \$48 billion merger between AT&T and TCI and simultaneously filed a proposed final judgment that would settle the suit. The decree required complete divestiture of TCI's interests in Sprint PCS over a five-year period. AT&T was the largest provider of mobile wireless telephone services in the United States, and TCI owned approximately 23.5 percent of the stock of Sprint's mobile wireless telephone business, Sprint PCS. Both AT&T and Sprint operated wireless networks that offered nearly complete nationwide geographic coverage. Under the terms of the settlement, the parties were required to transfer the Sprint PCS stock to an independent trustee before closing their merger. The trustee would then have approximately five years to complete the sale. The settlement was structured to minimize any risk that the divestiture of Sprint PCS stock would harm competition by interfering with

Sprint's ability to issue new stock or otherwise raise capital in order to continue to construct its wireless network.

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***Southeast Missouri Hospital/St. Francis Memorial Hospital***  
(1/8/99)

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Southeast Missouri and St. Francis Memorial abandoned their proposed merger after the Division expressed concerns that the merger could have inhibited the development of cost-effective health care in the southeast Missouri region. Southeast and St. Francis are the only two hospitals in Cape Girardeau, Missouri, which is the largest city south of St. Louis, Missouri. Had the merger gone forward, patients would have lost their only nearby choice of hospitals for routine services.

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***Formica Corp./International Paper Company***  
(1/15/99)

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The Division announced that it would challenge the proposed acquisition by Formica Corp. of the decorative high-pressure laminate (HPL) business of International Paper Company because the transaction would result in higher prices for HPL. HPL is used to make durable and impact-resistant decorative surfacing products, such as kitchen and bath countertops, eating surfaces, doors, lavatory dividers, desktops, and work surfaces. The Division said that the proposed acquisition would remove a key competitor from the approximately \$1 billion HPL market in the United States and would substantially increase the opportunity for the two dominant players to coordinate their prices. The risk of this coordinated interaction was

especially pronounced where the competitors had timely access to pricing announcements and other competitively sensitive information. On January 19, 1999, the transaction was abandoned.

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***Capstar Broadcasting Company/  
Radio of Vero, Inc.***  
(1/19/99)

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As a result of Division concerns, Capstar abandoned its proposed acquisition of WPAW-FM from Radio of Vero, Inc. At the time of the proposed acquisition, Capstar owned five radio stations in Vero Beach. Those stations controlled almost 60 percent of the advertising revenues in the market. Had the acquisition gone forward, Capstar would have controlled about 64 percent of the advertising revenues and controlled six of the eight C licensed stations, which would likely have resulted in higher prices for radio advertising.

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***Capstar Broadcasting Company/  
Powell Broadcasting***  
(1/25/99)

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Capstar abandoned its proposed acquisition of KTBT-FM from Powell Broadcasting because of concerns expressed by the Division about the merger and its effect on the Baton Rouge, Louisiana, radio market. At the time of the proposed acquisition, Capstar owned WYNK-A/F, WLSS-FM, KRVE-FM, WJBO-AM, and WBIU-AM in Baton Rouge. These stations represented 49 percent of the advertising revenues in the market. Powell owned KTBT-FM, which controlled about 1 percent of the market. Post-merger, Capstar would have controlled about half of the radio advertising revenues in Baton Rouge.

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***Media One Group-Erie, Ltd./  
Rambaldo Communications, Inc.***  
(1/27/99)

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Media One Group-Erie abandoned its efforts to purchase two Erie, Pennsylvania, radio stations from Rambaldo Communications after the Division expressed concerns that the acquisition likely would have resulted in higher prices to businesses in the Erie radio advertising market.

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***United States v. Signature Flight  
Support Corp., AMR Combs, Inc.,  
and AMR Corp.***  
(3/1/99)

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The Division challenged Signature Flight Support Corp.'s proposed acquisition of AMR Combs, Inc., and simultaneously filed a proposed final judgment that would settle the suit. The decree required Signature to sell flight support businesses at Palm Springs, Bradley International (Hartford, CT) and Denver Centennial Airports. Signature and Combs were head-to-head competitors in the business of providing flight support services, such as fueling, ramp, and hangar space rentals, at Palm Springs and Bradley International Airports. At Denver Centennial Airport, Signature had agreed to become the operator of a flight support facility, which upon completion in the year 2000 would have put it in direct competition with Combs.

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***United States v. Central Parking  
Corp. and Allright Holdings, Inc.***  
(3/16/99)

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The Division challenged the \$585 million merger between Central Parking and Allright Holdings and simultaneously filed a proposed final judgment

that required the companies to sell or terminate their interests in certain off-street parking facilities in 18 cities in 10 states. Central and Allright were the two largest parking management companies in the United States. Without the divestitures required under the decree, Central would have been given a dominant market share of off-street parking facilities in certain areas of each of the 18 cities and would have had the ability to control the prices and the type of services offered to motorists. The State Attorney General Offices of Maryland, Ohio, Illinois, Texas, Tennessee, and Minnesota assisted in the investigation.

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***United States v. Suiza Foods Corp. and Broughton Foods Company***  
(3/18/99)

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The Division filed suit to block Suiza Foods' acquisition of Broughton Foods because the transaction would result in higher prices for milk sold to school districts in Kentucky. Suiza and Broughton were head-to-head competitors for school milk contracts in dozens of school districts in south central Kentucky. According to the complaint, in more than 20 of those districts, the merger would have created a monopoly on bids to supply milk, and in at least 30 other districts, it would have reduced the number of bidders from three to two. The Division noted that the merger was set to occur in an industry that had been plagued by a history of collusion, with the Division having prosecuted more than 100 criminal cases involving bid rigging on school milk contracts including Kentucky. The complaint stated that the proposed merger could recreate the anticompetitive effects of a prior bid-rigging conspiracy. The Division sought—and the defendants agreed

not to oppose—entry of a temporary restraining order to prevent the companies from closing the deal until resolution of a preliminary injunction motion. Thereafter, a proposed final judgment was filed on April 28, 1999, requiring the divestiture of Southern Bell Dairy.

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***United States v. SBC Communications, Inc. and Ameritech Corp.***  
(3/23/99)

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The Division challenged SBC's \$62 billion acquisition of Ameritech Corporation and Comcast Cellular Corporation. The acquisitions, as originally proposed, would have led to a loss of head-to-head competition in wireless mobile telephone service in 17 markets in Illinois, Indiana, and Missouri. A proposed final judgment, filed simultaneously with the complaint, required Ameritech to divest its cellular telephone systems in St. Louis and other markets in Missouri, as well as its cellular telephone systems in three markets in Illinois where it competed with Comcast.

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***Reilly Industries, Inc./AlliedSignal, Inc.***  
(3/29/99)

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The Division did not oppose Reilly Industries' \$44 million acquisition of AlliedSignal's pitch and coal tar refining business after the parties agreed to restructure the transaction to resolve the Division's antitrust concerns. Reilly and AlliedSignal were two of the four significant producers of binder pitch sold to U.S. consumers. Binder pitch is an essential raw material in the manufacture of carbon anodes used for aluminum production and carbon graphite

electrodes used in steel production. The deal, as originally structured, would have reduced competition in the binder pitch market and would have likely lead to a price increase in aluminum and graphite products. The parties restructured the deal by: (1) precluding Reilly from implementing a planned strategic alliance with competitor VFT, which would have tied up additional binder pitch supplies to be sold in the United States; (2) limiting Reilly's contractual rights to use AlliedSignal's Ironton, Ohio pitch melter so that this melting capacity would be available to other binder pitch competitors; and (3) continuing to investigate the proposed tolling agreement entered into by Reilly and competitor Koppers to insure that the impact of the tolling agreement was procompetitive.

***United States v. Blackstone Capital Partners II Merchant Banking Fund L.P. and Howard Andrew Lipson***  
(3/30/99)

The Division filed a complaint against Blackstone Capital Partners II Merchant Banking Fund L.P. for a violation of Hart-Scott-Rodino premerger notification requirements. The violation was a result of its failure to produce a key document before undertaking its acquisition of more than \$15 million in voting securities from Prime Succession, Inc., an owner and operator of funeral homes and cemeteries. Under the proposed final judgment, filed simultaneously with the complaint, the defendants agreed to pay a civil penalty. Blackstone paid \$2,785,000 and Howard Andrew Lipson paid a \$50,000 penalty. The final judgment was entered by the Court on March 31, 1999.

***United States and States of Illinois and Missouri v. Allied Waste Industries, Inc. and Browning Ferris Industries, Inc.***  
(4/8/99)

The Division challenged the \$210 million acquisition of Allied Waste Industries from Browning Ferris Industries (BFI) of certain assets, including nine hauling companies, three transfer stations, and one landfill. According to the complaint, the proposed acquisition would substantially lessen competition for commercial solid waste hauling services in the St. Louis market. Allied and Browning-Ferris were two of only three major competitors providing small container commercial hauling services in the St. Louis market, which included the City of St. Louis and St. Louis County in Missouri and the Illinois counties of St. Clair, Madison, and Monroe. Commercial waste hauling is the collection and transportation to a disposal site of trash and garbage stored in small metal containers or dumpsters, generally by specialized front-end load trucks, from such establishments as office and apartment buildings and retail businesses, such as stores and restaurants. A final judgment, filed simultaneously with the complaint, required Allied and BFI to divest certain waste collection routes in the St. Louis metropolitan area.

***United States v. Input/Output, Inc. and The Laitram Corp.***  
(4/12/99)

The Division filed a complaint against Input/Output and The Laitram Corp. alleging a violation of Hart-Scott-Rodino premerger notification requirements. The violation was a result of the parties' failure to observe the required

antitrust premerger waiting period before consummating the acquisition. The complaint alleged that Input/Output obtained beneficial ownership of DigiCOURSE, a Laitram subsidiary, when it took operational control of DigiCOURSE when under contract to acquire the company. A proposed final judgment, filed simultaneously with the complaint, settled the suit. Input/Output and Laitram each agreed to pay a civil penalty of \$225,000 for a total of \$450,000. The final judgment was entered on May 13, 1999.

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***United States v. Interstate Bakeries Corp. and Continental Baking Company***  
(4/13/99)

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The Division filed a civil petition in U.S. District Court in Chicago, Illinois, to find Interstate Bakeries in civil contempt for violating a 1996 judgement of the Court, entered on January 9, 1996, in *United States v. Interstate Bakeries Corp., et al.*, (7/20/95). That civil suit was filed to block the merger of Interstate Bakeries Corp. (IBC) and Continental Baking. At that time, IBC and Continental were two of the three largest producers of white pan bread. Pursuant to the 1996 final judgment, IBC licensed its Weber's label to Four-S Baking Company for production and sale of Weber's brand bread in the Southern California area. On March 29, 1999, Four-S was purchased by Bimbo Bakeries USA, Inc., which became the sole stockholder of Four-S. The final judgment required IBC to grant "a perpetual, royalty-free, assignable, transferable, exclusive license" to use the Weber's label. Despite the clear language of the order, IBC had demanded that Four-S return the formulas and production processes for the baking of Weber's

bread. The petition stated that the IBC's actions were in civil contempt of the final judgment. A civil contempt is a sanction to enforce compliance with an order of the court, and a court may order a fine to coerce a defendant into compliance with the court's order. The Division requested that the Court find IBC in contempt and fine IBC for each day it was in violation of the order to comply. After defendants withdrew their letter to Bimbo and agreed to authorize assignment of know-how rights, the Division withdrew its contempt motion.

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***General Dynamics/Newport News Shipyard***  
(4/14/99)

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General Dynamics abandoned its \$2 billion proposed acquisition of Newport News Shipyard after the Division expressed concerns about the transaction. At the time of the proposed acquisition, General Dynamics already owned three of the six shipyards that built new vessels for the U.S. Navy, including one for building submarines and one for nuclear vessels. If it had acquired Newport News Shipyard, it would have controlled four of the six yards doing Navy construction, including the only two yards that construct submarines and the only two yards capable of building nuclear vessels. The Division coordinated its investigation with the Department of Defense.

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***United States v. Capstar Broadcasting Corp. and Triathlon Broadcasting Company***  
(4/21/99)

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The Division challenged Capstar's \$190 million acquisition of Triathlon Broadcasting Company. At the time of



the proposed acquisition, Capstar owned about 309 stations in 76 markets. Triathlon owned 31 radio stations in six markets. In order for the acquisition to go forward, Capstar was required to sell five radio stations in Wichita, Kansas. A proposed final judgment, filed simultaneously with the complaint, required Capstar to sell five radio stations: KEYN-FM, KWSJ-FM, KNSS-AM, KFH-AM, and KQAM-AM. The transaction, as originally structured, would have allowed Capstar to control more than 45 percent of the Wichita radio advertising market and would likely have allowed it to raise prices for advertising on radio stations in the Wichita metropolitan area.

***Clear Channel Communication, Inc./  
Jacor Communications***  
(4/22/99)

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The Division did not oppose Clear Channel's \$3.8 billion acquisition of Jacor after both parties agreed to sell 18 radio stations in four cities: Cleveland, Ohio; Dayton, Ohio; Louisville, Kentucky; and Tampa, Florida. Without the divestitures, the acquisition would have significantly reduced competition in those cities in the radio advertising market.

***United States v. Imetal, DBK Minerals, Inc., English China Clays, plc,  
and English China Clays, Inc.***  
(4/26/99)

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The Division challenged Imetal SA's \$1.24 billion acquisition of English China Clays, plc. The complaint alleged that the acquisition, as originally structured, would have substantially lessened competition in four markets: water-washed kaolin, calcine kaolin, ground

calcium carbonate, and fused silica. Imetal and English China Clays were two of only five producers of water-washed kaolin and calcined kaolin and were the dominant producers of fused silica in the United States. Water-washed kaolin is a type of clay used as a pigment for coating paper and as a filler in the body of paper. Calcined kaolin is used in paper-making when the paper requires a greater opacity. Ground calcium carbonate (GCC) is a mineral used as a pigment in paper-making. Fused silica is used in such applications as investment castings, high-grade glass, and refractory applications, such as the preparation of ceramics. A proposed final judgment, filed simultaneously with the complaint, required that Imetal divest assets and operations in each of the four product areas.

***United States v. Citadel Communications Corp., Triathlon Broadcasting Company, and Capstar Broadcasting Corp.***  
(4/28/99)

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The Division challenged the proposed acquisition by Capstar Broadcasting Corporation of Triathlon, including radio broadcast stations in Colorado Springs and Spokane, Washington. The complaint also sought to terminate a Joint Sales Agreement between Citadel Communications Corporation and Triathlon Broadcasting Company that eliminated competition in the sale of radio advertising on certain radio stations in Colorado Springs and Spokane. A proposed final judgment, filed simultaneously with the complaint, required the termination of the joint sales agreement, and in the Colorado market, Capstar was to transfer KSPZ-FM, KVOR-AM, and KTWK-AM to Citadel, while Citadel agreed to transfer KKLI-

FM to Capstar. In Spokane, Capstar agreed to transfer KEYF-FM and KEYF-AM to Citadel, and Citadel entered into an agreement with a third party to acquire KNJY-FM.

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***United States v. Bell Atlantic Corp. and GTE Corp.***  
(5/7/99)

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The Division's complaint challenged Bell Atlantic's merger with GTE and alleged that the merger, as originally structured, would have led to a loss of head-to-head competition in wireless mobile telephone services in 65 markets in nine states. A proposed final judgment, filed simultaneously with the complaint, settled the suit. Under the decree, the parties agreed to sell one of their two interests in overlapping wireless telephone systems. At the time, this was one of the largest divestiture packages involving a merger ever required by the Division and the second largest telecommunications merger in history.

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***Fox Paine Capital Fund L.P./Century Telephone***  
(5/7/99)

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Fox Paine restructured its proposed acquisition of the cellular operations of Century Telephone in Fairbanks, Alaska, in order to resolve concerns expressed by the Division that the acquisition, as originally planned, would have resulted in a loss of head-to-head competition in mobile wireless telephone services in Fairbanks. As a result of Fox Paine's restructuring, Fox was able to go forward with its acquisition of ATU Communications Inc. and the local telephone assets of the Municipality of Anchorage. Under the restructured agreement, Century Telephone continued to own

and operate the Fairbanks cellular system as it had prior to entering into the PTI deal with Fox.

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***Chittenden Corp./Vermont Financial Services Corp.***  
(5/12/99)

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The Division did not oppose the merger of Chittenden Corporation with Vermont Financial Services Corp. after the parties agreed to divest 17 branch offices and one ATM in Vermont with deposits totaling about \$480 million. The divested branch offices were located in eight Vermont banking markets: Barre-Montpelier, Bennington, Brattleboro, Burlington-St Albans, Middlebury, Rutland, Springfield, and Vergennes. With these divestitures, local customers and small businesses were assured of having competitively priced banking services.

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***United States v. Computer Associates International, Inc. and Platinum Technology International, Inc.***  
(5/25/99)

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This complaint challenged the acquisition of Platinum Technology International by Computer Associates International and alleged that the proposed transaction, as originally structured, would have reduced competition in five mainframe systems management product markets. Computer Associates was the dominant competitor in the job accounting products software business. Platinum was a major competitor in mainframe systems management products and had been one of the few substantial competitors to Computer Associates in a number of markets. A proposed final judgment, filed simultaneously with the complaint, settled the

suit. Under the decree, Computer Associates was required to sell six Platinum mainframe systems management software products and related assets.

***United States v. Florida Rock Industries, Inc., Harper Bros., Inc., Commercial Testing, Inc., and Daniel R. Harper, Inc.***  
(5/26/99)

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The Division filed a complaint that challenged Florida Rock Industries \$60 million merger with Harper Bros. and Commercial Testing and alleged that the acquisition would substantially lessen competition in the aggregate and silica sand markets in southwest Florida. Aggregate is used to manufacture asphalt concrete and ready mix concrete. Silica sand is used to manufacture specific types of ready mix concrete. A proposed final judgment, filed simultaneously with the complaint, settled the suit. Under the terms of the decree, Florida Rock was required to divest the Alico Road Quarry in Fort Myers, Florida, and the Palmdale Sand Mine in Palmdale, Florida.

***Lamar Advertising Company/Vivid, Inc.***  
(5/28/99)

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The Division did not oppose Lamar Advertising Company's \$22.5 million acquisition of Vivid after the parties agreed to restructure the deal. As originally structured, Vivid would have sold to Lamar all of its billboard operations throughout Wisconsin, Indiana, and Illinois, which would have led to a loss of competition between Vivid and Lamar for the sale of outdoor advertising in the two counties and fewer

choices for local businesses in connection with their billboard advertising requirements. Under the modified agreement, Vivid would retained certain billboards in Walworth County, Wisconsin, and Winnebago County, Illinois.

***Chancellor Media Corp./Petry Media Corp.***  
(6/9/99)

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Chancellor Media abandoned its proposed acquisition of Petry Media, a television representative firm, after the Division expressed concerns that the transaction would have decreased competition in the television representative market, which would have affected advertisers and owners of radio or television stations in the form of higher commissions paid to representative firms. Television representative firms act on behalf of client television or radio stations by selling time on those stations to advertisers located outside a station's local geographic area.

***Capstar Broadcasting Partners/James L. Gibbons***  
(6/14/99)

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Capstar Broadcasting Partners terminated its proposed acquisition of two radio stations, WPVR-FM and WFIR-AM, from James L. Gibbons in the Roanoke-Lynchburg, Virginia, radio market after the Division expressed concerns that the transaction would have reduced competition and raised prices for radio advertising. Had the merger occurred, Capstar would have operated nine of the top eleven stations in this market and controlled almost 64 percent of advertising revenues.



***United States and the State of Texas  
v. Aetna, Inc. and The Prudential  
Insurance Company of America  
(6/21/99)***

The Division challenged the \$1 billion proposed acquisition of The Prudential Insurance Company of America's health care business by Aetna. The complaint alleged that the proposed transaction would have made Aetna the dominant provider of health maintenance organization (HMO) and HMO-based point-of-service (POS) plans in Houston and Dallas-Fort Worth, Texas. The transaction, as originally structured, would have also resulted in increased prices or reduced quality of those health care plans. HMO plans generally compete in local areas on the basis of the breadth and quality of their physician and hospital networks, their benefits structure, and their prices. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required Aetna to divest its

NYLCare Health Maintenance Organization (HMO) businesses in Houston and Dallas-Fort Worth.

***Consolidated Edison, Inc./Orange &  
Rockland Utilities, Inc.  
(7/2/99)***

The Division did not oppose Consolidated Edison's (ConEd) \$800 million merger with Orange & Rockland Utilities after the latter company agreed to divest its electric generating plants and a plant co-owned by the companies to Southern Energy, Inc. Without the divestitures, ConEd would have owned 50 percent or more of the capacity of electric generation plants available to supply electricity in eastern New York during peak periods. The divestitures preserved competition for electricity in New York and ensured that electricity produced by Orange & Rockland's electric generation facilities remained an independent source for electricity.

***United States v. Cargill Incorporated  
and Continental Grain Company***  
(7/8/99)

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The Division filed suit challenging Cargill Incorporated's acquisition of Continental Grain Company's Commodity Marketing Group. Cargill and Continental operated nationwide distribution networks that annually move millions of tons of grain and soybeans to customers throughout the United States and around the world. The transaction, as originally structured, would have decreased competition for the purchase of grain (such as wheat and corn) and soybeans from farmers and other suppliers, resulting in American farmers' getting less money for major crops they produced. The complaint alleged that the combination of the merging firms' competing port elevators in the Pacific Northwest, Central California, and the Texas Gulf would have harmed competition, and that the combination of their competing river elevators and rail terminals in Midwestern states, such as Illinois, Iowa, Kansas, Missouri, and Ohio, would have been anticompetitive. In addition, the consolidation of Cargill and Continental river elevators along the Illinois River would have concentrated ownership of delivery points authorized by the Chicago Board of Trade (CBOT) for settlement of corn and soybean futures contracts under the control of Cargill and one other firm. This concentration would have increased the risk that prices for CBOT corn and soybean futures contracts could be manipulated. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The decree required Cargill to divest grain and soybean facilities in various states.

***Litton/Newport News***  
(7/9/99)

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Litton abandoned its proposed acquisition of Newport News Shipyard after the Division expressed concerns that this and a related transaction would reduce competition in the construction of naval ships. If this acquisition and Litton's acquisition of Avondale had been permitted to go forward, there would have been only two remaining companies building such ships for the Navy, and for some kinds of ships (auxiliary ships and amphibious crafts), there may have been no other close alternatives. At the time of this proposed transaction, there were six U.S. shipyards doing construction for the U.S. Navy, three of which were owned by General Dynamics and one by Litton.

***Abry Broadcast Partners/Bastet  
Broadcasting Corp.***  
(7/16/99)

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Abry Broadcast Partners abandoned its proposed agreement with Bastet Broadcasting to sell advertising on competing television stations and purchase Bastet after the Division expressed concerns about the transaction. At the time of the proposed acquisition, Abry owned WBRE-TV (the NBC affiliate) and Bastet owned WYOU-TV (the CBS affiliate), both of which were in Wilkes-Barre/Scranton, Pennsylvania, market. The transaction would have reduced competition in the sales of television advertising in the Wilkes-Barre/Scranton market, and businesses would have likely paid higher prices to advertise on the local broadcast stations.

***United States v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.***  
(7/20/99)

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The Division challenged Allied Waste Industries' proposed \$9.4 billion acquisition of Browning-Ferris Industries (BFI). Allied and BFI were direct competitors in many geographic markets for both waste collection and waste disposal services, and the transaction, as originally structured, would have substantially lessened competition for waste collection and disposal services in 18 markets. In most of the markets, the combination of Allied and BFI would have left only two or three major competitors. As a result, those competitors would have been able to coordinate their pricing, causing consumers (residents, businesses, and government entities) to pay higher prices. A proposed final judgment, filed simultaneously with the complaint, settled the suit. The final judgment required divestitures in every market in which there was a significant competitive overlap in the companies' waste or waste disposal operations. Waste collection firms, like Allied and BFI, contract to collect municipal solid waste (garbage and trash) from residential and commercial customers. They transport the waste to disposal facilities, such as transfer stations, incinerators, and landfills, which for a fee will process and legally dispose of waste.

***United States v. Smith International, Inc. and Schlumberger, Ltd.***  
(7/27/99)

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On July 27, 1999, in its first criminal antitrust contempt petition case involving a merger decree in more than 15 years, the Division filed civil and criminal contempt papers against Smith

International and Schlumberger. The Division petitioned the U.S. District Court for an Order to Show Cause why respondents Smith International and Schlumberger should not be found in criminal and civil contempt for violating a Final Judgment entered by the Court on April 12, 1994, in *United States v. Baroid, et al.*, Civil Action No. 93-262 (1993), as modified, by the Court's September 19, 1996 order. The Final Judgment was the result of a civil suit, filed December 23, 1993 by the Division, to block the merger of Dresser Industries, Inc. and Baroid Corporation. At that time, M-I Drilling Fluids, a company in which Dresser had a 64 percent interest, and Baroid were the two largest producers of drilling fluids in the United States. The court order settling the suit required Dresser to sell either its interest in M-I or Baroid's drilling fluids subsidiary. To comply with the Court's order, Dresser sold its M-I interest to Smith, and Smith agreed to be bound by the Final Judgment. The Final Judgment also barred Smith from selling the divested drilling fluid business to, or combining that business with, the drilling fluid operations of certain companies, including Schlumberger. According to the petitions, despite the clear language of the Court's order, Smith violated the Final Judgment by selling Schlumberger a 40 percent interest in the joint venture and combining M-I with Schlumberger's drilling fluid operations. The petitions alleged that Smith's actions were in willful violation of the Final Judgment to which it was bound and requested that the Court require both companies to pay a fee for each day that they were in violation of the order to comply and impose criminal penalties. On December 9, 1999 the Court found the companies in civil and criminal contempt and

imposed criminal fines of \$1.5 million. The parties also agreed to pay \$13.1 million to settle the civil contempt case.

**Thomas E. and James D. Ingstad/  
MSB, Inc.**  
(8/17/99)

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The Division did not oppose Thomas and James Ingstads' proposed acquisition of KFGO, Inc. after the Ingstad's agreed to divest five radio broadcast stations (KQWB-AM/FM, KPFX-FM, KLTA-FM, and KVOX-FM) to Triad Broadcasting, a new market entrant. Thomas and James Ingstad had proposed to purchase six radio broadcast stations (KFGO-AM/FM, KPTH-FM, KFGX-FM, and KVOX-AM/FM) from KFGO in the Fargo-Moorehead, North Dakota, radio market. At the time of the proposed acquisition, the Ingstads owned five stations. Under the restructured agreement, the Ingstads would retain ownership of KFGO-AM/FM, KVOX-AM, KFGX-FM, KPHT-FM, and WDAY-FM. Had the deal gone forward as originally structured, the Ingstads would have controlled nearly 93 percent of the radio advertising revenues and would have operated 11 of the top 14 stations in the Fargo-Moorehead market.

**AK Steel Corp/Armco, Inc.**  
(8/26/99)

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AK Steel Corp. agreed to license patents relating to the manufacture and sale of aluminized stainless steel to Wheeling-Nisshin, in order to resolve the Division's concerns that the proposed acquisition would lessen competition in the United States for the sale of aluminized 409 stainless steel. Aluminized 409 stainless steel is used prima-

rily in automobile exhaust systems. AK Steel was the only U.S. producer of aluminized 409 stainless steel and held two process patents for making the product, as well as the licenses on other product and process patents relating to the product. Armco, which was preparing to manufacture aluminized 409 stainless steel, held four patents, including the product patents, and had licenses for the two process patents owned by AK Steel. As originally structured, the proposed acquisition would have reduced competition by combining the only U.S. producer of aluminized 409 stainless steel with the only other U.S. company that had the rights to make and sell the product under the patents held by AK Steel and Armco. With the license agreement, Wheeling-Nisshin would have the ability to become a long-term, viable competitor in the manufacture and sale of aluminized stainless steel, preserving competition for the benefit of consumers of aluminized stainless steel.

**Marathon Media L.P./Citadel Communications Corp.**  
(9/1/99)

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The Division did not oppose Marathon Media's acquisition of radio stations from Citadel after Marathon agreed to sell three radio stations to New Northwest Broadcasters II, Inc. The deal, as originally structured, would have likely increased concentration and lessened competition for radio advertising in the Billings, Montana, market, given Marathon almost 65 percent of advertising revenues, and allowed Marathon to operate nine of the 16 stations in that market. Under the restructured agreement, Marathon would sell its three Billings radio stations (KIDX-FM,

KRSQ-FM, and KGHL-AM) to New Northwest, a new entrant to the Billings market. In addition, Marathon agreed to terminate its time brokerage agreement with another station in the market, KBEX-FM, and to abandon its contractual option to purchase the station. Under a time brokerage agreement, a radio station will sell blocks of time to a broker, who then supplies the programming to fill that time and sells commercial advertising to support that broker.

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***Fleet Financial Group/BankBoston Corp.***  
(9/2/99)

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The Division did not oppose Fleet Financial's merger with BankBoston after the parties agreed to sell \$13.2 billion in deposits in 306 branch offices in Massachusetts, New Hampshire, Rhode Island, and Connecticut in order to resolve concerns about the proposed merger for numerous banking customers in New England. This was the largest bank divestiture in history, exceeding the \$8.5 billion divestiture in the 1992 Bank of America/Security Pacific merger. The restructured agreement called for Fleet

to divest 204 branches with about \$816 billion in deposits in Massachusetts, 13 branches with about \$543.5 million in deposits in New Hampshire, 50 branches with approximately \$2.3 billion in deposits in Rhode Island, and 39 branches with approximately \$1.8 billion in deposits in Connecticut. The bulk of the divestitures were to go to a primary buyer, while 28 branches and about \$810 million in deposits were to be sold to Massachusetts banks.

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***Lamar Advertising Company/Chancellor Media Company***  
(9/15/99)

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The Division did not oppose Lamar's acquisition of Chancellor Media after Lamar agreed to divest billboard assets valued at over \$30 million in 31 markets across 13 states. The divestitures resolved the Division's concerns that Lamar's \$2.6 billion acquisition would have led to a significant loss of competition in the outdoor advertising market. These divestitures provided local businesses with greater choices for their outdoor advertising needs and preserved competition in the 31 markets.



## Antitrust Division Civil Non-Merger Cases

June 1, 1996 through September 30, 1999

### ***United States v. Women's Hospital Foundation and Women's Physician Health Organization*** (4/23/96)

This complaint alleged that a Baton Rouge hospital authorized its affiliated physician organization to develop a minimum fee schedule for its member doctors and to negotiate with managed care plans on behalf of the hospital and the doctors. In so doing, the hospital was trying to prevent other Baton Rouge area hospitals from being able to offer lower cost inpatient obstetrical services, while the doctors were trying to protect their fee structure. Together with the complaint, the Division filed a proposed consent decree that prohibited the defendants from fixing compensation levels or exchanging information about current or prospective compensation, except in carefully limited circumstances. The U.S. District Court for the Middle District of Louisiana entered that decree on September 16, 1996.

### ***United States v. City of Stilwell, Oklahoma and Stilwell Area Development Authority*** (4/25/96)

In the first antitrust case brought by the Department of Justice against a municipal utility system, the Division



challenged the “all-or-none” utility policy of the Stilwell Area Development Authority as an unlawful tying arrangement and as monopolization. The City of Stilwell refused to provide water and sewer services to certain area residents and businesses that did not agree also to buy electricity from the city. Stilwell has a legal monopoly over water and sewer service, but faces competition in the electricity market in some areas from Ozarks Rural Electrical Cooperative. The City of Stilwell enforced its “all-or-none” policy by cutting off water service to Ozarks’ customers and refusing to issue building permits to real estate developers who did not agree to choose city-supplied electricity for new construction. Some months after the filing of the complaint, the City entered into a settlement that prohibits the City from conditioning the purchase of water and sewer services on the purchase of electricity, requires the City to inform

potential water and sewer customers that their purchase of such service is not related to their choice of electric service provider, and requires the City to establish an antitrust compliance program. This decree was entered by the U.S. District Court for the Eastern District of Oklahoma on November 5, 1998.

***United States v. Association of Family Practice Residency Directors***  
(5/28/96)

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A trade association representing approximately 95 percent of all U. S. family practice residency programs adopted “ethical” rules that prevented hospitals from competing to attract prospective residents. The rules prevented residency programs from offering individualized economic inducements to candidates and from attempting to persuade those already in their first year of residency training to transfer to a competing program. At the same time as the Complaint was filed, the Division filed a proposed consent decree requiring the Association to withdraw the challenged guidelines. The U.S. District Court in Kansas City, Missouri, entered the decree on August 15, 1996.

***United States v. A&L Mayer Associates, Inc., A&L Mayer, Inc. and Fibras Saltillo, S.A. De C.V.***  
(5/30/96)

***United States v. Brush Fibers, Inc.***  
(8/29/96)

***United States v. Ixtlera, S.A. and MFC Corp.***  
(9/26/96)

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The Division filed companion civil and criminal charges concerning a conspiracy to fix wholesale and resale

prices of tampico fiber, a vegetable fiber grown in Mexico and used to make bristles in such items as household scrub brushes and brooms. Three related cases were brought against (1) a tampico wholesaler and two affiliated companies, (2) a tampico distributor, and (3) the other wholesaler and its affiliated distributor. The firms had conspired to fix the wholesale price of tampico and to enhance and preserve the price fix at the wholesale level by setting resale prices to be charged by their exclusive U.S. distributors. The cases were each settled by consent decrees, entered by the U.S. District Court in Philadelphia on August 16, November 19, and December 10, 1996.

***United States v. AnchorShade, Inc.***  
(6/20/96)

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In this case, the Division filed a complaint alleging resale price maintenance in the sale of boat umbrellas. The Division alleged that AnchorShade, Inc., conspired to fix the price of outdoor boat umbrellas that it sold to dealers throughout the United States. Dealers agreed to maintain the minimum resale price as a condition of receiving additional umbrellas from AnchorShade and to discount only in order to meet competition and only if they obtained written approval in advance from AnchorShade. Under the terms of the consent decree, filed at the same time as the complaint, AnchorShade may not enter into retail price maintenance agreements with its dealers or threaten to terminate any dealer for pricing below AnchorShade’s resale price. The decree was entered by the District Court for the Southern District of Florida on October 8, 1996.



**United States v. Alex  
Brown & Sons, Inc., et al.**  
(Nasdaq market makers)  
(7/17/96)

In this civil action, the Division filed suit against 24 market-making Nasdaq securities firms. Nasdaq is a computerized public market in which investors can buy and sell over-the-counter stocks. The complaint charged these Nasdaq market makers with inflating the quoted “inside

**United States v. American National  
Can Co. and KMK Maschinen AG  
(6/25/96)**

This case charged that the American National Can Co. (ANC) and KMK Maschinen AG, a Swiss firm, violated Section 1 of the Sherman Act when they agreed that KMK would stop making or selling in the United States laminated tubes like those used for toothpaste, that KMK would grant ANC an exclusive license to KMK's laminated tube-making technology in North America, and that ANC would stop making tube-manufacturing equipment. The consent decree, filed the same day as the complaint, allows KMK to reenter the North American laminated tubes market by terminating this exclusive deal, makes ANC's license non-exclusive, and prohibits future market allocation agreements between the firms. The decree was entered by the U.S. District Court for the District of Columbia on February 12, 1997.

spread” in certain Nasdaq stocks. The 24 firms adhered to and enforced a “quoting convention” which updated the prices they quoted by a quarter (25 cents) rather than an eighth (12.5 cents) whenever an individual dealer’s spread (the difference between the price at which an individual market-maker offers to buy a stock and the price at which it offers to sell the same stock, on a per share basis) was 75 cents or more. Consequently, spreads were kept artificially wide and investors paid higher trading costs for buying and selling stocks on the Nasdaq market. The consent decree, filed simultaneously with the complaint, prohibits the market makers from agreeing with other market makers to adhere to the quoting convention or to in any way fix prices. The settlement includes an enforcement mechanism that requires the settling firms to monitor and tape record 3.5 percent (or 70 hours per week) of their Nasdaq traders’ telephone calls and permits an unannounced Division representative to listen in on trader conversations as they occur. The decree was entered April 24, 1997 by the U.S. District Court for the Southern District of New York. Entry of the decree was

appealed by an intervenor, but entry of the judgment was upheld by the Second Circuit on August 6, 1998.

***United States v. General Electric Company***  
(8/1/96)

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In this case, the Division alleged that the General Electric Company's licenses for medical imaging equipment software violated Sections 1 and 2 of the Sherman Act by restricting licensee hospitals from competing with GE in the servicing of third-party medical equipment. For each type of advanced imaging equipment GE makes (such as CT scanners, X-ray machines, and MRI systems), it designs specialized software that improves the speed of any needed maintenance or repair work. GE required hospitals seeking to license this software in order to service their own equipment in-house to agree not to compete with GE in servicing medical equipment of any kind or manufacture owned by other hospitals, clinics, or doctors. The restriction applied even though the licensed GE software could not be used with the other equipment to be serviced. This license term forced hospitals to choose between licensing the specialized software and continuing to offer medical equipment service to nearby medical facilities. In May 1996, in response to the Department's investigation, GE relaxed some of these restrictions. In its complaint, however, the Department alleged that the new licenses still unreasonably limited competition in servicing some equipment and restricted competition in some markets for medical imaging equipment as well. In response to GE's motion to dismiss, the court dismissed the Section 2 claim but denied the motion as to the Section

1 claim. Subsequently GE agreed to settle the case and cease obtaining or enforcing the restrictive licensing provisions. The U.S. District Court for the District of Montana entered the decree on January 11, 1999.

***United States and the State of New York v. American Radio Systems, Inc., The Lincoln Group, L.P., and Great Lakes Wireless Talking Machine LLC***  
(10/24/96)

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The case challenged a proposed radio merger along with an existing joint sales agreement (JSA) between one of the merging parties and a third-party radio station. American Radio Systems (ARS), a large radio station owner and operator, owned three stations in Rochester, New York, and had a joint sales agreement with a fourth station owned by Great Lakes, giving ARS control over the sale of advertising on that station. In the merger, ARS sought to acquire four additional Rochester radio stations from the Lincoln Group. The merger was likely to substantially lessen competition, and the JSA had already eliminated price competition between the ARS stations and the Great Lakes station without accomplishing any procompetitive efficiencies. The Division challenged the merger as a violation of Section 7 of the Clayton Act and challenged the JSA as a violation of Section 1 of the Sherman Act. The proposed consent decree required ARS to divest three stations and terminate the JSA with the Great Lakes station. The U.S. District Court for the District of Columbia entered the final judgment on January 31, 1997.

***State of Oregon, State of Washington, State of California, United States v. Jeff Mulkey, Jerry Hampel, Todd Whaley, Brad Pettinger, Joseph Speir, Thomas Timmer, Richard Sheldon, Dennis Sturgell, Allen Gann, and Russell Smotherman***  
(2/11/97)

In this case, the Division, along with the states of California, Oregon, and Washington, charged ten West Coast commercial crab fishermen with leading a conspiracy to raise the sale price charged by fishermen to crab processors and boycotting all processors until they agreed to pay the fixed price for crab. The defendants agreed to raise the price they charged to processors and secured similar commitments from competing fishermen, using threats, intimidation, and coercion where necessary. In furtherance of the conspiracy, the fishermen set up a group boycott, known as a “tie-up” in the industry, in which they refused to fish for crab until all commercial seafood fishermen in every major California, Oregon, and Washington port were receiving at least the fixed minimum price. As a result of the agreement, prices to consumers rose, and the supply of crab available to processors was significantly reduced during the course of the boycott. The complaint charged the defendants with violating state laws as well as Section 1 of the Sherman Act. The consent decree enjoins the defendants from entering into or enforcing any agreement to fix prices or restrict the supply of seafood or engaging in any conduct in furtherance of such an agreement. The U.S. District Court in Portland, Oregon, entered the Final Judgment on June 16, 1997.

***United States v. Seminole Fertilizer Corp.***  
(6/18/97)

***United States v. Norsk Hydro USA Inc., et al.***  
(2/19/98)

These cases charged Seminole Fertilizer Corporation, formerly a major fertilizer manufacturer, Norsk Hydro USA, Inc., and Farmland Industries with colluding to restrain competitive bidding for the purchase at bankruptcy auction of a Tampa, Florida, facility used to store ammonia, a primary raw material used for the production of diammonium phosphate fertilizer. The Division alleged that Seminole and two of its competitors, Norsk Hydro USA Inc. and Farmland Industries Inc., met in March 1992 and agreed that Seminole would withdraw from the storage facility auction, eliminating Norsk’s chief rival as a viable competing bidder. The Division filed a separate complaint against Norsk Hydro and Farmland Industries. The Division filed proposed consent decrees simultaneously with the complaints pursuant to which the defendants agreed not to enter into agreements with others illegally setting the price of assets used in the production and distribution of fertilizer and being sold under the auspices of a court or federal agency. The defendants also agreed not to submit joint bids for fertilizer assets without first notifying the seller of the asset and the person administering the sale of the asset that the bid was jointly proposed. The Seminole decree was entered by the U.S. District Court for the Middle District of Florida in September 1997, and the Norsk/Farmland decree was entered by the same court on May 18, 1998.

***United States v. Rochester Gas & Electric Corp.***  
(6/24/97)

This contested case challenged an agreement between RG&E and the University of Rochester designed to limit competition in the Rochester electricity market. The University had been planning to build a “cogeneration” plant, which would have produced electricity as a byproduct of producing steam for heating and cooling campus buildings. The Division alleged that RG&E threatened to cut off research grants to the University if it built the plant and promised to give the University hundreds of thousands of dollars for a conservation program if it did not. The Division also alleged that RG&E agreed to give the University an exceptionally low electricity rate. The University agreed not to participate or even study participation in any other project that would provide other current RG&E customers with energy from anyone other than RG&E, and it agreed not to build the new plant. Instead, it continued to produce steam using a coal plant built in 1929. Both the United States and RG&E moved for summary judgment. On February 17, 1998, the Court granted partial summary judgment for the United States, ruling that RG&E was not protected by the state action defense. This decision precipitated a settlement that bars RG&E from enforcing this agreement or entering into a similar one with another actual or potential competitor. The consent judgment was entered on June 18, 1998. Subsequent to announcement of the settlement, the University of Rochester issued requests for proposal to build a new and efficient cogeneration plant.

***United States v. AIG Trading Corp., BP Exploration & Oil, Inc., and Cargill International, S.A.***  
(7/18/97)

The Division filed suit against three major oil trading firms, AIG Trading Corp., BP Exploration, and Cargill International, alleging that they exchanged information in order to facilitate an agreement to lower the commissions they paid to brokers in the United States for certain Brent crude oil contracts. Brent crude oil is produced in the North Sea. A Brent spread contract is the simultaneous purchase and sale of two contracts, for different months forward, for Brent crude oil. A Brent CFD is a commercial transaction based on the difference between the current published price for Brent crude oil that is already loaded or available to be loaded on a specific day and the future price for Brent crude oil to be loaded in the next month forward. The trading



firms had been paying separate full commissions to brokers for both sides of the paired contracts and wanted to reduce the amount they paid. The complaint alleges that from July 1992 through May 1993, AIG, BP, Cargill, and others conspired to exchange current and prospective brokerage commission information on Brent spread contracts and CFDs and lowered the brokerage commissions they paid to brokers in the United States. The proposed order, filed at the same time as the complaint, prohibits AG, BP, and Cargill from agreeing with any other trader to fix, lower, raise, stabilize, or maintain any brokerage commission for Brent spread contracts and CFDs or to exchange any information for these purposes. The proposed settlement also prohibits these companies from requesting or advising other traders to lower, raise, or change any brokerage commissions for Brent spread contracts and CFDs. The final order was entered on October 10, 1997, in the U.S. District Court for the Southern District of New York.

***United States v. Microsoft Corp.  
(Contempt Petition)***  
(10/20/97)

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The Division alleged that by bundling its Internet Explorer browser with its Windows 95 operating system, Microsoft had violated the consent decree entered in 1995. The District Court entered a preliminary injunction prohibiting the practice, and Microsoft appealed. On June 23, 1998, the D.C. Court of Appeals reversed the lower court's decision and lifted the injunction. The three-judge panel held that the district court judge had denied Microsoft certain procedural rights and

that it was inappropriate for it to have appointed a "special master" to advise the court on technical issues. The Court of Appeals remanded the case, which was then supplanted by the subsequent complaint alleging violations of the Sherman Act.

***United States v. Tom Paige Catering Co. and Valley Foods, Inc.***  
(12/16/97)

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The Division alleged that two Ohio food service contractors had established a joint venture in order illegally to eliminate competition between them for bids on food service contracts with the Cleveland Head Start Program. Head Start, a program funded by the U.S. government, provides comprehensive developmental services, including free lunches, for low-income preschool children. According to the complaint, lunch prices for Head Start programs in Cleveland rose by 50 percent after the joint venture began in 1994. The proposed Stipulation and Order, filed with the complaint in the United States District Court for the Northern District of Ohio, requires the two companies to dissolve their joint venture and prohibits them from engaging in similar activities with each other or other food service contractors. The Final Judgment was entered on May 15, 1998.

***United States v. International Business Machines Corporation and Storage Technology Corporation***  
(12/18/97)

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The Division charged that a 1996 distribution agreement between International Business Machines Corporation (IBM) and Storage Technology Corporation (STK) restrained competition





between the two companies in the multibillion dollar market for mainframe computer disk storage subsystems. IBM and STK are two of only four major independent competitors worldwide in the development, production, and marketing of mainframe disk storage subsystems, which store and provide ultrafast access to data. The complaint challenged a 1996 agreement that imposed substantial financial penalties on STK if it sold its mainframe disk storage systems to anyone other than IBM and imposed financial penalties on IBM if it did not buy a fixed quantity of disk storage subsystems products from STK. According to the complaint, these and other anticompetitive terms effec-

tively eliminated STK as an independent competitor in the market. On March 20, 1998, the United States District Court for the District of Columbia entered the proposed Stipulation and Order, which prohibits IBM and STK from maintaining contract provisions that would financially penalize STK for marketing mainframe disk storage subsystems to customers other than IBM. The settlement also limits, after 1998, the amount of mainframe disk storage subsystems that STK may sell through IBM, unless STK also makes substantial sales to customers other than IBM.

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***United States v. Microsoft Corp. (Monopolization)***  
(5/18/98)

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The Division challenged a variety of practices by Microsoft designed to monopolize the Internet browser market in

order to protect Microsoft's monopoly position in the personal computer operating systems market. The complaint alleged that, among other things, Microsoft illegally bundled its Internet browser with its Windows operating system, attempted to divide markets with its competitors, and imposed exclusionary terms and conditions in its contracts with various customers and vendors in violation of Sections 1 and 2 of the Sherman Act. The court consolidated a parallel action of 20 state attorneys general with the federal action, and also consolidated trial on the merits with the preliminary injunction hearing. Trial began on October 19, 1998. The Division and Microsoft each submitted



the direct testimony of 12 witnesses in written form as directed by the court. Cross-examination of these witnesses was heard in open court. On rebuttal, each side presented three witnesses. The parties have submitted proposed findings of fact to the court, which heard oral argument on the proposed findings on September 21, 1999. On November 5, 1999, Judge Jackson issued his findings of fact. On December 6, 1999 the Division filed Plaintiffs' Joint Proposed Conclusions of Law.

Oral argument on the collateral issues of public access to depositions took place on October 20, 1998, before the United States Court of Appeals for the D.C. Circuit. On January 29, 1999, the Court of Appeals upheld the district court's holding, supported by the Department, that the Publicity in Taking Evidence Act requires public access to depositions in government Sherman Act cases, subject to reasonable protections to be imposed by the district court.

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***United States v. Federation of Physicians and Dentists, Inc.***  
(8/12/98)

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The Division seeks to prohibit the defendant Federation of Physicians and Dentists, Inc. (the Federation), whose members include nearly all of the independent orthopedic surgeons in Delaware, from continuing its Section 1 conspiracy with its member physicians to negotiate jointly with various managed care plans to obtain higher fees for the Federation's otherwise competing orthopedic surgeons. The complaint alleges that the Federation's representatives and its member orthopedic surgeons reached an understanding that the members would negotiate only through

the Federation and would resist the efforts of BlueCross BlueShield of Delaware (BC/BS) to reduce the fees it paid orthopedic surgeons in Delaware to the level of fees it paid to other medical specialists in Delaware and to orthopedic surgeons in nearby states. The complaint further alleges that, pursuant to that understanding, nearly all of the members of the Federation rejected a BC/BS fee proposal and terminated their individual provider services contracts with BC/BS. Trial has been set for April 2000.

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***United States v. Medical Mutual of Ohio***  
(9/23/98)

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Medical Mutual of Ohio, Ohio's largest health care insurer, discouraged discounting and price competition among health plans in the Cleveland area by use of a most favorable rate or MFR (sometimes referred to as most-favored-nation or MFN) contract provision. The MFR provision required hospitals contracting with Medical Mutual to charge other health plans 15 to 30 percent more than they charged Medical Mutual. Its purpose was to raise hospital costs for competing health plans, thereby limiting their ability to compete with Medical Mutual. Medical Mutual aggressively enforced the provision with well over 100 hospital audits, resulting in millions of dollars in penalties paid by the hospitals over the years. After Medical Mutual was notified that the Division's suit was imminent, it announced that it would stop enforcing its MFR provision. This announcement did not adequately protect consumers, since there was a risk that, absent a decree, Medical Mutual would reinstate the MFR provision or implement other

policies with similar anticompetitive effects. Medical Mutual then agreed to entry of a consent decree, which was entered by the U.S. District Court for the Northern District of Ohio on January 29, 1999.

***United States v. Visa U.S.A. Inc., Visa International Corp., and MasterCard International Incorporated***  
(10/7/98)

On October 7, 1998 the Antitrust Division filed a complaint in the Southern District of New York alleging that Visa and MasterCard, the nation's two largest credit card networks, have adopted rules and practices that limit competition in the credit card network market. The complaint identifies two separate, but interrelated, competitive problems. First, Visa and MasterCard are jointly owned and controlled by the same group of large banks; as a result, those two networks, which account for 75 percent of the market, do not compete vigorously against each other. Second, Visa and MasterCard have adopted rules that restrict the ability of their member banks to do business with other credit card networks. In particular, both networks prohibit their member banks from issuing American Express and Discover cards, while allowing the banks to issue cards on both bank networks. Trial is set for the summer of 2000.

***United States v. Mercury PCS II, LLC***  
***United States v. Omnipoint Corp.***  
***United States v. 21<sup>st</sup> Century Bidding Corp.***  
(11/10/98)

The Division filed civil complaints in U.S. District Court in Washington, D.C., charging Mercury PCS II, LLC, of Jackson, Mississippi; Omnipoint Corp. of Bethesda, Maryland; and 21<sup>st</sup> Century Bidding Corp. of Newport Beach, California, with using coded bids during FCC auctions to negotiate agreements among bidders eliminating competition for licenses to certain bandwidth. According to the complaints, the FCC conducted an auction for more than 1000 personal communications services (PCS) radio spectrum licenses to be used to provide digital wireless telephone services similar to cellular phone service, covering 493 cities or regions, from August 1996 to January 1997. On occasion, each of the defendants coded the final three digits of its bid to correspond with the FCC number for a particular city or region for which the defendant wanted a license. Each defendant used the codes to highlight the license it wanted and to invite firms that had been competing for that license to agree to cease bidding for it, in exchange for an agreement that the defendant would not to bid against them in other markets they wanted. In its complaints, the Division alleged that, as a result of these agreements, the government received less money than it otherwise would have for licenses in Indianapolis, Indiana; Toledo, Ohio; and Lubbock, Texas. A proposed consent decree was filed along with each complaint. The final judgments for 21<sup>st</sup> Century and Omnipoint were entered on February 24, 1999; the final judgment

for Mercury PCS was entered on April 29, 1999.

***United States v. Dentsply International, Inc.***  
(1/5/99)

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The complaint alleged that Dentsply International, Inc., has unlawfully maintained a monopoly in the market for artificial teeth in the United States by entering into restrictive dealing arrangements with more than 80 percent of the nation's tooth distributors, preventing them from selling products made by Dentsply's competitors. Dentsply's efforts to deprive rivals of an effective distribution network have resulted in increased prices for artificial teeth, reduced innovation, prevented other firms from competing effectively, and deterred entry into the market. Litigation is pending in the U.S. District Court for the District of Delaware. Trial is expected in 2000.

***United States v. Federation of Certified Surgeons and Specialists, Inc. and Pershing Yoakley & Associates, P.C.***  
(1/26/99)

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On January 26, 1999, the Division filed suit to stop a large number of general and vascular surgeons in Tampa, Florida, from increasing their fees to artificially high levels through illegal joint contract negotiations and boycotts. The complaint named as defendants the Federation of Certified Surgeons and Specialists, Inc. (FCSSI), a corporation formed by 29 competing general and vascular surgeons to obtain higher fees for their services from managed care plans, and Pershing Yoakley and Associates, P.C. (PYA), an accounting and

consulting firm that represented FCSSI in negotiations. The FCSSI surgeons made up the vast majority of the general and vascular surgeons with operating privileges at five Tampa hospitals; in 1996, they performed 87 percent of the general and vascular surgeries at the hospitals. The complaint, filed in Tampa, alleges that PYA approached health plans on behalf of FCSSI surgeons to negotiate higher fees and informed each of them that the surgeons would terminate their contracts and refuse to participate in the plan's network unless it contracted with all FCSSI surgeons under terms proposed by PYA. In one instance, 28 FCSSI surgeons terminated their contracts with a health plan before the plan capitulated to PYA's demands. A final judgment was entered on June 1, 1999, which prohibits illegal contract negotiations and boycotts.

***United States v. Citadel Communications Corp., Triathlon Broadcasting Company, and Capstar Broadcasting Corporation***  
(4/28/99)

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On Wednesday April 28, 1999, the Antitrust Division filed a civil antitrust action in United States District Court in Washington, D.C., to terminate a joint sales agreement (JSA) between Citadel Communications Corporation and Triathlon Broadcasting Company. Under the JSA, Citadel set prices and sold radio advertising time for not only its own radio stations in Colorado Springs, Colorado, and Spokane, Washington, but also for competing stations owned by Triathlon. In both markets, Citadel and Triathlon had been direct competitors, and the JSA between them ended competition to the detriment of advertisers. In Colorado Springs, the Complaint alleges that Citadel set prices for

stations constituting 58 percent of the radio advertising market and also attempted to eliminate certain discounts by agreements with its remaining competitors. In Spokane, the Complaint alleges that Citadel set prices for 44 percent of the radio advertising market under the JSA with Triathlon. In addition, Triathlon then bought more stations, representing an additional 26 percent of the market. Competition between these new Triathlon stations and the Citadel/Triathlon JSA was substantially diminished because of Triathlon's common ownership and because Triathlon received part of the revenue from the JSA. When the Division filed the action, it also filed a negotiated final judgment requiring Citadel and Capstar Broadcasting Corporation (Triathlon's successor) to terminate the JSA and requiring Capstar to divest one station in Spokane. Under the terms of the final judgment, neither Citadel nor Capstar will own stations representing more than approximately 40 percent of the radio advertising market in either Colorado Springs or Spokane. The final judgment also prevents both Citadel and Capstar from acquiring additional stations or entering JSAs in either market without notice to the Division. The Judgment was entered on August 26, 1999.

***United States v. AMR Corporation,  
American Airlines Inc., and AMR  
Eagle Holding Corporation***  
(5/13/99)

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On May 13, 1999, the Antitrust Division filed suit in Wichita, Kansas, against American Airlines Inc., the second largest airline in the United States, for monopolizing and attempting to monopolize airline passenger service to and from Dallas/Ft. Worth International Airport (DFW). American dominates DFW, the third largest airport in the United States, flying more than 70 percent of all nonstop passengers who use the airport. The complaint charges that American repeatedly sought to drive small, start-up airlines out of DFW by saturating their routes with additional flights and cutting fares. After it drove out a new entrant, American reestablished high fares and reduced its service. The complaint describes on American's responses to Vanguard Airlines, Sun Jet, and Western Pacific in four DFW spoke routes: Wichita, Kansas, and Kansas City, Missouri (Vanguard); Long Beach, California (Sun Jet); and Colorado Springs, Colorado (Western Pacific). The complaint alleges that American's conduct was predatory because the costs of some of the flights it added exceeded the revenues they generated. American expected to recoup those temporary losses, however, by charging higher fares after an entrant left the market.

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